93-961

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOAN E. COLEMAN,

Petitioner,

V.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, BERNADETTE CHAVEZ, HORACE MITCHELL, and DOES 1-50, Inclusive,

Respondents.

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioner, a discharged permanent employee, was denied due process of law where she was not offered a pre-termination hearing at a meaningful time by the state agency, with the agency then successfully asserting as a defense petitioner's failure to exhaust the administrative remedy of obtaining a writ of mandamus pursuant to a California statute which expressly applies only where the state agency's regulations require "a proceeding in which by law a hearing is required to be given [and] evidence is required to be taken." (Code of Civil Procedure Section 1094.5)

2. Whether petitioner was denied due process of law when her causes of action for Retaliatory Discharge, Unlawful Termination, Breach of Contract, Deprivation of Due Process, Interference

with the Right to Practice a Profession, Willful Misconduct, Conspiracy, and Negligent Interference with Prospective Business Advantage were dismissed because of the failure of the state agency to provide a proceeding in which by law a hearing is required to be taken and evidence is required to be taken--i.e., a matter beyond petitioner's control.

3. Whether petitioner was denied due process of law where she was terminated from permanent employment, a recognized property right under California law, without a pre-termination hearing.

4. Whether a pre-termination hearing afforded to petitioner must be one at which evidence is required to be taken, a record or transcript of the proceedings is made, and petitioner is afforded the opportunity to call and cross-examine witnesses.

5. Whether petitioner was denied due process of law where the first level of appellate review by the state agency was conducted by the same individual who terminated petitioner from employment and was the subject of a grievance she filed with the state agency.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. Preliminary Statement	3
B. Factual Backgroun	8
C. The Denial of Petitioner's Due Process Right	15
1. UCI's Administrative Procedures	16
2. The Issue of Seeking Mandamus	17
REASONS FOR ALLOWANCE OF THE WRIT	20
A. Right to Notice and a Hearing	20
B. The Inability to Seek a Writ of Mandamus was Beyond Petitioner's Control .	23
C. The Necessity of an Evidentiary Hearing	25
D. The Absence of an Impartial Decision-Maker	28
CONCLUSION	30

APPENDIX: (reprinted)

Supreme Court's denial of
Petition for Review . . . APP-1

Opinion of the Court of
Appeals APP-2

Judgment by the Court APP-15

Notice of Entry of Order . . . APP-17

Complaint (including
Exhibits 1 through 31) . . APP-20

TABLE OF AUTHORITIES

Cases — Page

Armstrong v. Manso
(1965) 380 U.S. 545, 552,
85 S.Ct. 1187,
14 L.Ed. 2d 62 21

Boddie v. Connecticut
(1971) 401 U.S. 371, 377-378,
91 S.Ct. 780,
28 L.Ed.2d 113 . . . . . 20, 21

Cleveland Board of Education v. Loudermill
(1985) 470 U.S. 532,
105 S.Ct. 1487,
84 L.Ed.2d 494 22

Gibson v. Berryhill
(1973) 411 U.S. 564, 579,
93 S.Ct. 1689,
36 L.Ed.2d 488 29

Goldberg v. Kelly
(1970) 397 U.S. 255,
90 S.Ct. 1011,
25 L.Ed.2d 287 26

Johnson v. Mississippi
(1971) 403 U.S. 212, 216,
91 S.Ct. 1778,
29 L.Ed.2d 423 28

Logan v. Zimmerman Brush Co.
(1987) 455 U.S. 422,
102 S.Ct. 1148,
71 L.Ed.2d 265 . . . . . 21, 24

Los Angeles County Employees' Ass'n. v. Sanitation Dist. No. 2
(1979) 89 Cal.App. 3d 294, 299 22

Westlake Community Hosp. v Superior Court
(1976) 17 Cal.3d 465 . . 18, 23

Statutes

Code of Civ. Proc.
§ 1094.5 . . . . . passim

OPINIONS BELOW

1. Order of the California Supreme Court denying Petition for Review. (Reprinted in the Appendix: APP-1)

2. Opinion of the Court of Appeal of the State of California, Fourth Appellate District, Division Three. (Reprinted in the Appendix: APP-2-14)

3. Judgment By the Court, re Summary Judgment, Superior Court of California, County of Orange. (Reprinted in the Appendix: APP-15-16)

4. Notice of Entry of Order, Superior Court of California, County of Orange. (Reprinted in the Appendix: APP-17-19)

JURISDICTION

The Judgment, reprinted in the Appendix at APP-15-16, which Petitioner seeks to have reviewed, is dated December

30, 1991 and was entered by the Court on that date.

The Judgment was affirmed by the Fourth District Court of Appeal (APP-2-14). A Petition for Review before the California Supreme Court was denied on August 11, 1993 (APP-1).

The jurisdiction of this Court is invoked under Title 28, Section 1257(a) of the United States Code.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provision involved in this appeal is the Fourteenth Amendment to the United States Constitution:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

A. Preliminary Statement

This action concerns a complaint filed by petitioner, Joan E. Coleman ("Petitioner"), against the Regents of the University of California and various other defendants arising out of her termination from employment as a Principal Administrative Analyst at the University of California, Irvine ("UCI"). The Complaint was filed on July 3, 1990. (APP-20). It alleges eight causes of action based upon various tort and contract theories: Retaliatory Discharge, Unlawful Termination, Breach of Contract, Deprivation of Due Process, Interference with the Right to Practice a Profession, Willful Misconduct, Conspiracy, and Negligent Interference With Prospective

Business Advantage. These are the claims which are the subject of this Petition and which Petitioner has heretofore appealed. Additionally, the complaint alleges three additional causes of action for discrimination--including sex, race, and age. The dismissal of these discrimination claims on a motion for summary judgment was not appealed and is not within the ambit of this present Petition for Certiorari.

At the heart of Petitioner's state court complaint is the allegation that although she was consistently evaluated by her superior, defendant Horace Mitchell ("Mitchell"), as either more than satisfactory or superior, she was in essence demoted on July 18, 1988 by being assigned to report to defendant Bernadette Chavez ("Chavez"), a particular favorite of Mitchell, who had created for Chavez

the new role as Director of Resource Planning for Student Affairs. (App-23-25). When Petitioner objected to her de facto demotion and filed an Administrative Review as provided for by UCI's Management and Professional Program, Policy 70 (APP-25), UCI, Mitchell and Chavez retaliated by terminating her from employment. (APP-34). Subsequently, Petitioner filed her Complaint, naming the Regents of the University of California, Mitchell, and Chavez as defendants.

In response to the complaint, the defendants filed a demurrer, the basis of which was that because Petitioner had not obtained a writ of administrative mandamus under California Code of Civil Procedure Section 1094.5, she had not exhausted her administrative remedies; therefore, her claims for contract and tort damages (excluding discrimination) should be

dismissed with prejudice. Petitioner's opposition was clear: she had never been afforded an opportunity for a hearing at which evidence was to be taken, although such a hearing is expressly required by Code of Civil Procedure Section 1094.5 as a pre-condition to the application of this statute, thus by the plain language of the statute, administrative mandamus was not even applicable to her circumstance or available to her. Therefore she was not required (or even permitted) to seek a writ of mandamus as a prerequisite to filing a lawsuit.

On November 8, 1990, a hearing on the demurrer was held before the Honorable Richard N. Parslow, Jr., Judge Presiding. Following that hearing, Judge Parslow sustained the demurrer without leave to amend as to all the tort and contract causes of action. The basis of the ruling

was that Petitioner had failed to exhaust her administrative remedies by not obtaining a writ of mandamus. (APP-17-19).

As a result of Judge Parslow's ruling, Petitioner was essentially precluded from litigating those claims which form the basis of her action against UCI, Mitchell, and Chavez.

She continued the lawsuit for some time with regard to the three discrimination claims, but subsequently the defendants filed a motion for summary adjudication as to these causes of action, and following the granting of that motion by the Honorable David C. Velasquez, all remaining claims against the defendants were dismissed. On December 31, 1991, the Court entered judgment against Petitioner. (APP-15-16). It is this judgment that Petitioner now seeks to have reviewed.

Following entry of this judgment on March 9, 1992, Petitioner appealed to the Court of Appeal of the State of California, Fourth Appellate District. The appellate court affirmed the trial court. (APP-2-14). Subsequently, Petitioner filed a Petition for Review with the California Supreme Court, which was denied on August 11, 1993. (APP-1).

B. Factual Background

Petitioner was employed as a Principal Administrative Analyst II in the Office of Student Affairs at the University of California, Irvine (hereafter, "UCI") from September 24, 1984 until approximately July 18, 1988, at which time she was terminated from employment despite the fact that during the same time period she was consistently evaluated in all aspects of job performance as either "More than

Satisfactory" or "Superior." (APP-23).

The precipitating event leading up to, and culminating in, Petitioner's employment termination was her de facto demotion by her immediate superior, defendant Horace Mitchell, Vice-Chancellor for Student Affairs (hereafter, "Mitchell"). Specifically, Mitchell had long conferred special favor upon his administrative assistant, Bernadette Chavez (hereafter, "Chavez"), one further expression of which was to create a special title for her (Director of Resource Planning for Student Affairs), then assign Petitioner to work under Chavez's supervision though in fact Petitioner and Chavez were equals and Chavez had never before supervised a professional person. (APP-24-25). Petitioner subsequently filed an Administrative Review (in essence a

grievance) under Policy 70 of the Management and Professional Program (commonly called "MAPP") (APP-25-26). The MAPP Program policies are set forth in a personnel policy manual and delineate the employment relationship between the University and professional persons such as plaintiff. (APP-26-27). The thrust of the Administrative Review was that Mitchell was discriminating against Petitioner by demoting her in order to advance his favorite, Chavez, that he was under-utilizing Petitioner's skills, that he was denying her professional advancement opportunities, and that she was the victim of emotional harassment. (APP-245-258).

Although counsel for defendants improperly represented to the trial court that MAPP Policy 70 "mandates a full adversarial hearing..." it in fact

provides for no pre-termination hearing at all. Policy 70 merely provides for various levels of administrative review if an informal resolution is not reached, plus the possible appointment of a factfinder. (APP-69-72). In short, not only was Petitioner not required to have such a hearing; the University never timely provided an opportunity for her to have one. (It should be noted, parenthetically, that following Petitioner's termination from employment, MAPP Policy 70 was expressly revised to provide for such a hearing, but of course this revision did not apply to Petitioner.)

The Administrative Review filed by Petitioner regarding her assignment to Chavez was marred from start to finish by a host of due process violations including (by way of illustration) interference with

informal dispute resolution (APP-26-27; "appellate" review by Mitchell, the very person who was the subject of charges in the first place (APP-29 and APP-79-84); the failure to timely appoint a factfinder despite the clear language of Policy 70 (APP-29-30; 69-72; 79-84); and the failure of the factfinder to make proper findings of fact and to address all relevant issues (APP-43-46; 245-258).

While the Administrative Review was still pending, Mitchell and Chavez retaliated against Petitioner for having filed it. On November 23, 1988 Chavez served Petitioner with a "Letter of Warning" (such a thing is nowhere authorized by University policy) which accused her of insubordination and threatened to fire her if there were any further such instances. (APP-32-33; 95-97).

When Petitioner protested this overt act of retaliation by attempting to file a Second Administrative Review, as required by MAPP Policy, the University refused to permit the filing, stating with its own brand of logic that the threatened termination did not "involve termination" and therefore no such review was permitted. (APP-32-34) Ironically, the very next day Chavez followed up her Letter of Warning by serving Petitioner with a Notice of Intent to Terminate. (APP-34, 98-113).

Petitioner responded in writing to the Notice of Intent to Terminate (APP-114-145) but the very next day Mitchell terminated her from employment, effective that same day. (APP-36, 146-147).

This time there could hardly be any argument that the action did not "involve termination." Therefore, Petitioner filed

a Third Administrative Review, as required by MAPP Policies 70 and 85, protesting her termination from employment. (APP-42, 162-244). Once again, her Review process was conducted with continued disregard for her due process rights. Refusing to process it, the University instead put it "on hold" until the First Administrative Review (now more than a year old because of repeated delays by the University) was concluded (APP-50); Mitchell, who terminated Petitioner's employment was again selected by the University as the first level of appellate review (APP-50-51, 219-223); the second level of appellate review was conducted by the same administrator, Executive Vice-Chancellor Tien, who had reviewed Petitioner's First Administrative Review (APP-51-52, 222-223) adversely to her.

Ultimately, the decision of Executive

Vice-Chancellor Tien was upheld by Chancellor J.W. Peltason who, on November 30, 1989, wrote to Petitioner, affirming the decision to terminate her employment. (APP-234-235). Since that decision finally exhausted the lengthy administrative proceedings and remedies available to Petitioner, she filed her state court lawsuit on July 3, 1990.

C. The Denial of Petitioner's Due Process Right

There are two levels at which Petitioner has been denied due process of law. The first is with regard to UCI's administrative procedures, which Petitioner has detailed at length in her Complaint. The second is with regard to the ruling whereby she has been denied the right to litigate her non-discrimination causes of action. Each of these is briefly discussed below.

1. UCI's Administrative Procedures

Petitioner was denied her due process right by UCI in the following respects: (1) She was afforded no pre-termination hearing by UCI; (2) She was afforded no meaningful opportunity to confront witnesses, cross-examine them, or call witnesses on her behalf; (3) No evidence was taken at any hearing; (4) UCI prevented her from trying to resolve her grievance informally, in clear violation of its own policies; (5) She was not provided with an impartial reviewer but in fact was reviewed by the very individual who terminated her employment; (6) She was denied the appointment of a fact-finder, again in direct violation of UCI's policies and procedures; (7) No findings of fact were made upon which a subsequent reviewer could rely; and (8) The subsequent reviewer failed to ground his

review upon proper findings of fact.

These deprivations of due process form the central core of Petitioner's complaint and have been raised throughout the litigation and subsequent appeal. Indeed, both in the appeal to the Fourth District Court of Appeal and the Petition for Review to the California Supreme Court, Petitioner's consistent claim was that she was denied due process of law by virtue of the fact that at no meaningful point in time was she afforded a pre-termination hearing at which evidence was to be taken.

2. The Issue of Seeking Mandamus

Although Petitioner filed three different Administrative Reviews with UCI and sought every level of appeal available to her within those three reviews, her non-discrimination causes of action were dismissed upon the ground that she failed

to exhaust her administrative remedies. Again, she was denied due process of law by virtue of being deprived of her right to assert her non-discrimination causes of action.

The reasoning of the trial court in sustaining defendants' demurrer without leave to amend was that because Petitioner did not seek and obtain a writ of mandamus pursuant to California Code of Civil Procedure Section 1094.5, she therefore failed to exhaust her administrative remedies. This conclusion was affirmed by the Court of Appeal, which followed the holding in Westlake Community Hosp. v Superior Court (1976) 17 Cal.3d 465 that a plaintiff must first seek and obtain a writ of mandamus before he or she may assert tort claims in a court of law. (App-10).

The problem with this argument is

that administrative mandamus under Code of Civil Procedure Section 1094.5 was not available to, or required of, Petitioner. She was therefore neither obligated to seek a writ of mandamus under Code of Civil Procedure Section 1094.5 nor was that remedy even available to her as a matter of law.

Code of Civil Procedure Section 1094.5 provides in relevant part:

> "Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury." (Emphasis added.)

Under the University's policies at the time of Petitioner's grievance, MAPP Policy 70 expressly did not even provide--

much less require--an evidentiary hearing. As a result, defendants put Petitioner in a classic Catch-22 situation: they denied her a pre-termination hearing at which evidence was to be taken, then raised as a defense the fact that she did not obtain a writ of mandamus under a state statute which on its face applies only if an evidentiary hearing is required by the University's own rules. She was not only denied due process in that the hearing was not afforded her; that due process deprivation was later compounded by using it as a sword to cut off her right to prosecute her non-discrimination causes of action.

REASONS FOR ALLOWANCE OF THE WRIT

A. Right to Notice and a Hearing

It is well established that the State may not deprive one of a property right without first providing notice and an

opportunity to be heard. Boddie v. Connecticut (1971) 401 U.S. 371, 377-378, 91 S.Ct. 780, 28 L.Ed.2d 113. The opportunity for a hearing must be "at a meaningful time and in a meaningful manner" (Armstrong v. Manso (1965) 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed. 2d 62. While the formality and procedural requisites for such a hearing are dependent upon the interests involved, particularly the importance of the property right at stake, the "root requirement [is] that an individual be given an opportunity for a hearing before he is deprived of any significant property interest,..." Boddie, supra, 378; Logan v. Zimmerman Brush Co. (1987) 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed.2d 265.

There is no question that Petitioner enjoyed a valuable property right in continued public employment. California

law has conclusively held that the "...right to continue in ...permanent public employment ... [is] a 'vested right'...." Los Angeles County Employees' Ass'n. v Sanitation Dist. No. 2 (1979) 89 Cal.App. 3d 294, 299.

Given that right, it is clear under the authority of Cleveland Board of Education v. Loudermill (1985) 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 that Petitioner had the right to be afforded a hearing at a meaningful time before she was terminated from employment. She was not given such an opportunity. Moreover, the very denial of this opportunity was later used by the University to argue that because she did not have such a hearing, she failed to obtain a writ of mandamus (which required such a hearing as a pre-requisite for seeking such relief) and therefore did not exhaust her

administrative remedies.

B. The Inability to Seek a Writ of Mandamus was Beyond Petitioner's Control

The Catch-22 in which Petitioner found herself is obvious: if she elected not to seek a writ of mandamus (as was her choice) on the grounds that Code of Civil Procedure Section 1094.5 was not applicable, she ran the risk of facing the defense that under the Westlake decision she had not exhausted the administrative remedy of prevailing on a writ application. On the other hand, had she sought such a writ, the University would doubtless have defended on the grounds that she had no right to seek such a remedy inasmuch as MAPP Policy 70 neither required nor even provided for an evidentiary hearing. Given this Hobson's choice, what was Petitioner to do? The only alternative was to choose one of the

two equally unsatisfactory options and be prepared to battle the obvious defense.

In Logan v. Zimmerman Brush Co., supra, the Supreme Court dealt with a parallel situation, where the petitioner's cause of action was dismissed because a state official, for reasons beyond petitioner's control, failed to comply with a statutorily-mandated procedure. The petitioner argued that terminating his claim because the Illinois Fair Employment Practices Commission failed to convene a timely conference--a matter beyond his control--effectively violated his federal rights to due process and equal protection of the laws. The Supreme Court agreed, confirming once again that a cause of action is a recognized property right under the Fourteenth Amendment's Due Process Clause.

In the case of Petitioner Coleman,

she was, like Logan, victimized by a situation over which she had no control, with the resulting loss of her causes of action. It was the State which elected to deprive her of a hearing, then utilize that ploy as a means of getting her causes of action dismissed.

C. The Necessity of an Evidentiary Hearing

While it is true that a formal evidentiary hearing is not necessarily required in many cases to meet the requirements of minimal due process, Petitioner's situation here is unique in that the statute relied upon to dismiss her causes of action requires for its operation that there be a hearing at which evidence is required to be taken.

The very concept of an "evidentiary" hearing includes not just providing written responses to charges (as

Petitioner did) or talking informally with a "fact-finder" (as Petitioner also did). It contemplates the proffering of evidence--oral as well as written--through the examination and cross-examination of witnesses. Goldberg v. Kelly (1970) 397 U.S. 255, 90 S.Ct. 1011, 25 L.Ed.2d 287. Furthermore, since a review under Code of Civil Procedure Section 1094.5 would necessarily have involved a review of the record by a trial judge, an evidentiary hearing would have needed to provide such a record, either through a stenographic transcription or a taped proceeding. While "notice and an opportunity to be heard" does not normally require a trial-type proceeding or the taking of evidence, as many cases have held, there are clearly situations in which such formality may be necessary to assure minimal due process. For example, in Goldberg vs. Kelly, supra,

the Supreme Court found it inadequate as a procedural safeguard that the petitioner, a welfare recipient, could provide only written responses:

> "Thus a recipient is not permitted to present evidence to that official orally, or to confront or cross-examine witnesses. These omissions are fatal to the constitutional adequacy of the procedures.... It is not enough that a welfare recipient may present his position to the decision maker in writing or secondhand through his caseworker....Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision....In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." (At pp. 268-269)

While it is obviously true that Petitioner's situation is different in that she was not a welfare recipient, it is nonetheless the case that the property

right in question is extremely important: it is the loss of her profession and livelihood. Moreover, the need for a more formal proceeding involving the cross-examination of witnesses and preparation of a record was dictated by the state itself, since it relied on a statute which itself requires an evidentiary hearing. In short, in Petitioner's case, as in that of the petitioner in Goldberg, there was a heightened need for a more formal hearing because of the importance of the property right involved, compounded in Petitioner's case by the State's reliance on the evidentiary hearing requirement in Code of Civil Procedure Section 1094.5.

D. The Absence of an Impartial Decision-Maker

It is axiomatic that "[t]rial before an unbiased judge' is essential to due process." Johnson v. Mississippi (1971)

403 U.S. 212, 216, 91 S.Ct. 1778, 29 L.Ed.2d 423. This due process rule is equally applicable to administrative as well as judicial proceedings. Gibson v. Berryhill (1973) 411 U.S. 564, 579, 93 S.Ct. 1689, 36 L.Ed.2d 488.

Here, Petitioner has challenged throughout this litigation, both at trial and appellate court levels, the biased decision-makers who adjudicated her rights. The very basis of her grievance was that Horace Mitchell, the Dean of her school, was biased against her and in favor of defendant Chavez. Yet it was Mitchell who not only terminated her employment but also served as the appellate reviewer of his own conduct, despite protests by Petitioner. Such an egregious situation clearly deprived Petitioner of the right to an impartial decision-maker.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Petition for a Writ of Certiorari be granted.

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Dated: December 9, 1993

APPENDIX

[FILED
August 11, 1993]

FOURTH APPELLATE DISTRICT, DIVISION THREE,
NO. G012275
S033592

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

JOAN E. COLEMAN, Appellant

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA Et Al., Respondents

Appellant's petition for review DENIED.

/s/
Chief Justice

[FILED May 26, 1993]

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOAN E. COLEMAN,	)	G012275
	)	
Plaintiff and Appellant,	)	(Super. Ct.
	)	No. X-62-93-80
v.	)	
	)	OPINION
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al.,	)	
	)	
Defendants and Respondents.	)	
	)	

Appeal from a judgment of the Superior Court of Orange County, Richard N. Parslow, Jr. and David C. Velasquez, Judges. Affirmed.

Groh, Carroll & Stern and David B. Carroll for Plaintiff and Appellant.

Gray, Cary, Ames & Frye, Richard A. Paul and Robert Stricker, James E. Holst, Christine Helwick, and Jeffrey A. Blair

for Defendants and Respondents.

* * *

The superior court dispatched most of this wrongful termination suit on demurrer, concluding plaintiff's failure to exhaust her administrative remedies by first petitioning in the superior court for a writ of mandate to overturn the University of California's decision to terminate her doomed the damages action. We affirm.

I

Joan Coleman was in the midst of the grievance process, challenging what she termed a de factor demotion,[1] when she was

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[1] The facts concerning this grievance are not particularly relevant to the issues on appeal. Suffice it to say, personnel were reorganized and a new supervisory layer was added. Coleman could no longer report directly to the individual who had been her supervisor. Instead, another employee who had previously been on Coleman's level became

terminated from her position in the office of Student Affairs at the University of California, Irvine.[2] Her newly designated immediate supervisor cited a number of reasons for this action in a written "Notice of Intent to Terminate"; they all had to do with Coleman's attitude, relationships with coworkers, and job performance.

Coleman, however, maintained she was

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her supervisor. Coleman did not complain that she should have received the new supervisory appointment. Rather she asserted that so long as she held her particular appointment, the university was not free to realign the supervisory structure. When the reorganization occurred, Coleman, who is Black, was 51 years old. Her supervisor is a Black male. The "promoted" coworker is an Hispanic female.

[2] Coleman's position made her a member of what is yclept the "Management and Professional Program" (MAPP). Special rules and grievance procedures are in place for these employees.

fired in retaliation for exercising her grievance rights. She initiated grievance proceedings within the university system to challenge the firing on the basis that it was retaliatory and constituted sex, age, and race discrimination. She eventually received a letter from the university system's chancellor upholding her termination.

She then sued the Regents of the University of California and her two immediate supervisors, Horace Mitchell and Bernadette Chavez, for damages. The complaint included eleven causes of action that she entitled as follows: retaliatory discharge, unlawful termination, breach of contract, deprivation of due process, sexual discrimination, racial discrimination, age discrimination, interference with the right to practice a

profession, willful misconduct, conspiracy, and negligent interference with prospective business advantage.

Defendants demurred to all causes of action except the ones alleging sexual, racial, and age discrimination under the Fair Employment and Housing Act. They argued plaintiff's failure to exhaust her administrative remedies by petitioning the superior court for a writ of mandate to overturn the termination decision precluded her civil action for damages on what they characterized as "common law claims."

The superior court agreed and sustained the demurrer without leave to amend. Plaintiff's petition to this court for extraordinary relief was denied (GO10535).

Defendants were then awarded summary

judgment on the statutory causes of action.[3] Once the final judgment was entered, Coleman noticed an appeal. In this court, she challenges only the sustaining of the demurrer to the eighth

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[3] Defendants advise in their brief before his court that "[t]he discrimination claims brought under the FEHA for sex, race and age discrimination are statutorily exempt from the exhaustion requirement. Respondents therefore did not demur to the complaint as to those three claims . . . ." A cause of action for retaliatory discharge exists under the FEHA, of course. (*Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083; *Rojo v. Kliger* (1990) 52 Cal.3d 65.) Nevertheless, plaintiff did not oppose defendants' demurrer on the basis that the first cause of action was based on a violation of Government Code section 12940, although that allegation is explicitly made in paragraph 26 of the complaint. In any event, it would serve no purpose to remand to permit plaintiff to reallege a statutory cause of action for retaliatory termination: The superior court granted summary judgment on the other statutory theories, concluding they were time-barred. Plaintiff has not challenged that ruling, and it would similarly bar any attempt to revive the retaliatory termination cause of action.

nonstatutory causes of action.

II

The superior court's decision to sustain defendants' demurrer is supported by an unbroken line of appellate authority. In *Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, the Supreme Court observed "that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act." (Id. at p. 292.) More than a generation later, the court expanded on the notion in *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465. There, the court concluded that a physician whose hospital staff privileges were revoked could not sue the hospital or its board for damages unless she first succeeded in setting

aside the hospital's decision via a superior court petition for writ of mandate: "As in a malicious prosecution action, plaintiff's position rests on a contention that defendants intentionally and maliciously misused a quasijudicial procedure in order to injure her; such a claim is necessarily premised on an assertion that the hospital's decision to revoke plaintiff's privileges was itself erroneous and unjustified. . . . [W]e believe that so long as such a quasijudicial decision is not set aside through appropriate review procedures the decision has the effect of establishing the propriety of the hospital's action. [Citation.] Accordingly, we conclude that plaintiff must first succeed in overturning the quasi-judicial action before pursuing her tort claim against

defendants. (1] In our view, the above requirement accords a proper respect to an association's quasi-judicial procedure, precluding an aggrieved party from circumventing the established avenue of mandamus review. In addition, this result will simplify court procedures by providing a uniform practice of judicial, rather than jury, review of quasi-judicial administrative decisions." (Id. at p. 484.)

The *Westlake* court also took the opportunity to distinguish the facts of that dispute from those in *Willis v. Santa Ana etc. Hospital Assn.* (1962) 58 Cal.2d 806: "Under similar circumstances in Willis . . . our court upheld an aggrieved doctor's right directly to institute a tort action for damages resulting from the exclusion; we reaffirm the *Willis* holding

today. When a hospital denies staff privileges to a doctor *without affording him the basic procedural protection to which he is legally entitled*, the hospital and parties acting in concert with the hospital can offer no convincing reason or justification why they should be insulated from an immediate tort suit for damages." (*Westlake Community Hosp. v. Superior Court*, *supra*, 17 Cal.3d at p. 478, italics added.)

The facts in this case parallel those in *Westlake*, not *Willis*. Coleman conceded in the complaint that she participated in the university's administrative review process[4]; she failed to allege, however,

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[4] True, she also complained the process was fundamentally unfair; but those complaints were directed to the reviews concerning her de factor demotion and the "letter of warning" advising that her continued disruptive conduct could result in dismissal, not to any review

that she sought to overturn the firing decision via a petition for writ of mandate. The omission is fatal. (*Westlake Community Hosp. v. Superior Court*, *supra*, 17 Cal.3d 465.)

Moreover, it would serve no purpose to give Coleman an opportunity to amend. The Court of Appeal in *Edgren v. Regents of University of California* (1984) 158 Cal.App.3d 515 was faced with a virtually identical issue. There, in long-time university employee initiated the grievance procedure to contest his dismissal. Before the process could conclude, however, he "declined to participate further, stating [] he believed that he could not get a fair

---

dealing with her termination. As to that, she simply alleged she had "exhausted her administrative remedies through the hearing procedures of UCI."

hearing because of the circumstances under which the hearing was being conducted." (*Id.* at p. 519.) The terminated employee then filed an action for damages without first seeking judicial intervention to set aside his dismissal. The superior court sustained the university's demurrer without leave to amend, and the Court of Appeal affirmed: "We conclude that plaintiff has failed to allege sufficient facts which bring any cause of action within the scope of any of the recognized exceptions to the requirement that he must exhaust his administrative remedies before pursuing an action for damages, whether based on contract or tort. It does not appear reasonably probable that amendment to [the] pleading can cure or excuse the requisite jurisdictional allegation. Accordingly, it was not an abuse of

discretion to deny leave to amend." (*Id.* at p. 523.) So it is here.

Judgment affirmed. Respondents are entitled to costs.

CROSBY, J.

WE CONCUR:

SILLS, P.J.

WALLIN, J.

[FILED Dec 31 1991]

SUPERIOR COURT OF STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOAN E. COLEMAN, Plaintiff, vs. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, BERNADETTE CHAVEZ, HORACE MITCHELL and DOES 1-50, Inclusive, Defendants.	CASE NO. X629380 JUDGMENT BY THE COURT Cal.Code Civ. Proc. § 437(c)

This Court, having on December 11, 1991, granted the motion for summary judgment by defendants THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, BERNADETTE CHAVEZ and HORACE MITCHELL, and having ordered entry of judgment as requested in

said motion,

IT IS ORDERED, ADJUDGED and DECREED that plaintiff JOAN E. COLEMAN shall take nothing, and that defendants shall recover from said plaintiff costs of suit in a sum to be determined in a costs bill.

DATE: 12/30/91

/s/ DAVID C. VELASQUEZ
JUDGE OF THE SUPERIOR COURT

JAMES E. HOLST, #34654
CHRISTINE BELWICK, #57274
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[FILED NOV 20 1990]

Attorneys for Defendants The Regents of the University of California, Bernadette Chavez and Horace Mitchell

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

JOAN E. COLEMAN, Plaintiff, vs. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al. Defendants.	Case No. X629380 EXPEDITED TRIAL PROGRAM JUDGE RICHARD W. PARSLOW, JR. EXEMPT FROM FEES (Cal. Govt. Code, § 6103.0

Parties Filing Demurrer:
Defendants The Regents of the University of California, Bernadette Chavez and Horace Mitchell

Party Whose Pleading is Subject to Demurrer:
Plaintiff Joan E. Coleman

NOTICE OF ENTRY OF ORDER

Date: November 8, 1990

Time: 1:30 p.m.

Dept: 11

Trial Date: None Set

TO: PLAINTIFF JOAN E. COLEMAN AND TO HER ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on November 8, 1990, in the above-captioned court, The Honorable Richard N. Parslow, Jr. presiding, the court entered in its minutes an order sustaining demurrer without leave to amend as to the first, second, third, fourth, eighth, ninth, tenth and eleventh causes of action, on the basis that plaintiff has failed to exhaust successfully administrative remedies respecting those claims.

NOTICE IS HEREBY FURTHER GIVEN that the court denied without prejudice

defendants' motion to strike.

Dated: November 15, 1990

JAMES E. HOLST
CHRISTINE HELWICK
JEFFREY A. BLAIR

By: /s/
JEFFREY A. BLAIR
Attorneys for Defendants The Regents of the University of California, Bernadette Chavez and Horace Mitchell

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[FILED JUL 03 1990]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOAN E. COLEMAN, Plaintiff, vs. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, BERNADETTE CHAVEZ, HORACE MITCHELL, AND DOES 1-50, inclusive, Defendants.	CASE NO. X629380 COMPLAINT FOR: 1. RETALIATORY DISCHARGE; 2. UNLAWFUL TERMINATION; 3. BREACH OF CONTRACT; 4. DEPRIVATION OF DUE PROCESS; 5. SEXUAL DISCRIMINATION; 6. RACIAL DISCRIMINATION; 7. AGE DISCRIMINATION; 8. INTERFERENCE WITH THE RIGHT TO PRACTICE A PROFESSION; 9. WILLFUL MISCONDUCT;

10. CONSPIRACY;
11. NEGLIGENT INTERFERENCE WITH PROSPECTIVE BUSINESS ADVANTAGE

Plaintiff alleges:

PRELIMINARY ALLEGATIONS

1. At all relevant times pled herein, plaintiff was, and is, an individual residing in Orange County, State of California. Until her termination from employment on or about December 7, 1988, plaintiff was an employee of the University of California, Irvine, ("UCI").

2. Defendant, The Regents of the University of California ("Regents"), was at all relevant times pled herein, and is, a public legal entity charged under the California Constitution, Article IX, § 9 with government of a public trust, the University of California, including UCI.

3. Plaintiff is informed and believes and thereon alleges that defendant, Bernadette Chavez, is and at all relevant times pled herein was, a resident of Orange County, State of California.

4. Plaintiff is informed and believes and thereon alleges that defendant, Horace Mitchell, is and at all relevant times pled herein was, a resident of Orange County, State of California.

FIRST CAUSE OF ACTION

(Retaliatory Discharge Against Regents, and Does 1-15)

5. Plaintiff realleges and incorporates by reference Paragraphs 1 through 4.

6. From approximately September 24, 1984 until approximately July 18,

1988, plaintiff was employed at UCI as Principal Administrative Analyst II in the Office of Student Affairs. In that capacity she was employed for the purpose of providing analytical support to the Vice-Chancellor of Student Affairs and the Assistant Vice-Chancellor.

7. Although her Performance Evaluations during the period September 24, 1984 - July 18, 1988 evaluated her in all categories as either "More than Satisfactory" or "Superior" (the two highest of the five categories of performance), plaintiff was notified on approximately June 30, 1988 by defendant Horace Mitchell ("Mitchell"), Vice-Chancellor - Student Affairs, that effective July 18, 1988, plaintiff was going to be assigned to report to the Director of Resource Planning for Student

(See Exhibit "1", attached hereto and incorporated by reference.)

8. In fact, as of June 30, 1988, there was no Director of Resource Planning for Student Affairs. Instead, the title created by Mitchell on July 1, 1988 to benefit defendant, Bernadette Chavez ("Chavez"), then Executive Assistant to the Vice-Chancellor of Student Affairs (i-.e., Mitchell). Plaintiff is informed and believes and thereon alleges that Mitchell and Chavez were engaged at the time in a personal, romantic relationship which influenced Mitchell in his decision-making and caused him to confer favorable treatment on Chavez to the detriment of Coleman. On approximately July 1, 1988 Mitchell not only conferred on Chavez the additional title of Director of Resource Planning for Student Affairs,

but also appointed her to "supervise" plaintiff although plaintiff, as of June 30, was Chavez' equal (in terms of rank) and Chavez, who was less experienced than plaintiff, had never supervised a professional staff person before, only clerical staff. (See Exhibit "2", attached hereto and incorporated by reference.)

9. On approximately September 28, 1988, plaintiff filed a Request for Review (hereafter, the "First Administrative Review") pursuant to Policy 70 of the Management and Professional Program ("MAPP"), protesting, among other things, the preferential treatment of Chavez by Mitchell, the disparate treatment plaintiff (including her de facto demotion), and the lack of support of plaintiff by Mitchell. (The Management and Professional Program, as set forth in

UCI's Personnel Policy manual, is "a distinct segment of the University's personnel programs and has it own salary grades, titles, and personnel policies." The policies are set forth in a personnel policy manual. Those policies, according to UCI, "delineate the employment relationship between the University and Management and Professional Program members with regular appointments.")

10. MAPP Policy 70, a copy of which is attached hereto as Exhibit "3" and incorporated by reference, provides that a MAPP Program member (such as plaintiff) should initially try to resolve conditions and actions which may affect the member's employment through discussion with the member's immediate superior. Prior to filing the First Administrative Review, plaintiff had several such discussions

with Mitchell, her immediate superior before July 18, 1988, the effective date of her new assignment, and with Chavez, the technical "immediate superior" after July 18, 1988. The discussions, which in large part concerned Mitchell's favoritism of Chavez, did not resolve the issues in question. When plaintiff made further attempts to resolve her dispute with Chavez she was told by Chavez, in clear violation of MAPP Policy 70, that it was "inappropriate" for her "to spend work time and clerical assistance" in an informal attempt to resolve her employment dispute, although such an informal attempt is precisely what MAPP Policy 70 encourages. Chavez also instructed plaintiff not to seek information from either the Affirmative Action Office or the University Personnel Office.

11. MAPP Policy 70 also provides: "If the concerns regarding conditions and actions cannot be resolved through discussions with the member's immediate superior, the member may submit a request for review to the University official at the next administrative level." Following the fruitless discussions with her superiors, Mitchell and Chavez, plaintiff filed the First Administrative Review on September 28, 1988, as alleged above at Paragraph 9.

12. In violation of MAPP Policy 70, plaintiff's First Administrative Review was not sent to the University official at the next highest level, who was Chang-Lin Tien ("Tien"), Executive Vice-Chancellor, despite a request by plaintiff's counsel that Tien either acknowledge that he was the next-highest official or otherwise

identify that person. (See Exhibit "4", attached hereto and incorporated by reference.) Instead, the First Administrative Review was simply handed back to Mitchell for determination -- the very individual who, along with Chavez, was the butt of the Review in the first place. This fact was not revealed to plaintiff or her counsel until after the fact, on October 27, 1988.

13. On October 27, 1988 Barbara Davia ("Davia"'), Manager, Labor/Employee Relations, suddenly notified plaintiff that Mitchell had completed his "review" of her "complaint." Mitchell's decision was attached to Davia's letter. Not surprisingly, Mitchell's finding was that there was "no evidence" to support plaintiff's charges.

14. On November 3, 1988 plaintiff's

counsel wrote to Davia, protesting Mitchell's involvement in the review process as well as the University's failure to appoint a factfinder pursuant to MAPP Policy 70, which plaintiff had demanded in her First Administrative Review on September 28, 1988. (See Exhibit "5", attached hereto and incorporated by reference.)

15. The University ignored plaintiff's counsel's objection regarding Mitchell's involvement in the review process. As to the factfinder, the University could not explain its patent violation of MAPP Policy 70 in refusing to appoint such a factfinder other than to state: "We have interpreted the first paragraph of C (of MAPP Policy 701 to mean that a factfinder, it one is requested, is appointed after conclusion of the first

step of the review." (See Exhibit "6", attached hereto and incorporated by-reference.) In fact, MAPP Policy 70 says nothing of the kind.

16. On November 3, 1988, plaintiff filed a request, pursuant to MAPP Policy 70, for a second level of review. In that request she protested that her earlier request for a factfinder had been ignored in favor of returning the matter to Mitchell. (See Exhibit "7", attached hereto and incorporated by reference.)

17. Plaintiff is informed and believes and thereon alleges that on approximately November 10, 1988 Tien finally requested that Penny Sperling ("Sperling"), an employee in Ambulatory Care at the University of California, Irvine Medical Center serve as factfinder.

18. Sperling's report was required

to be completed by November 30, 1988. When it was not timely completed, Davia unilaterally granted Sperling an extension to December 20, 1988. (See Exhibit "8", attached hereto and incorporated by reference.

19. On November 23, 1988, before the Sperling Report was completed and while the First Administrative Review was still in process, Chavez summarily served plaintiff with a Letter of Warning, a copy of which is attached hereto as Exhibit "9" and incorporated by reference. The Letter, which was not authorized by any provision of MAPP Policy, falsely accused plaintiff of insubordination and warned her that any further act of insubordination would result in her dismissal.

20. Since the Letter of Warning

threatened to terminate her employment and was based on false accusations, plaintiff filed a request for review (hereinafter, the "Second Administrative Review") on November 28, 1988, protesting that the Letter of Warning was a deliberate retaliation against her-for filing the First Administrative Review and demanding that a factfinder be appointed. On December 1, 1988, Davia denied plaintiff's request for a factfinder, insisting that, although the Letter threatened to terminate plaintiff's employment, "it does not involve termination" and, therefore, the Second Administrative Review did not "qualify for a factfinder."

21. Once again, the University denied plaintiff fundamental due process by referring the Second Administrative Review to Mitchell for further "review."

On December 7, 1988, Mitchell issued his decision, affirming Chavez's Letter of Warning and concluding that Coleman had been insubordinate. On February 13, 1989, no further request for review having occurred, Davia closed the file on the Second Administrative Review.

22. On December 2, 1985, one day after Davia asserted that the Letter of Warning did not "involve termination" Chavez served plaintiff with a Notice of Intent to Terminate, a copy of which is attached hereto as Exhibit "10" and incorporated by reference. Items 28 - 30 of the Attachment to the Notice (described by Chavez as "problems..... that have resulted in the decision" to terminate Plaintiff) directly concern the incident which was the subject matter of the Second Administrative Review.

23. On December 6, 1985, Plaintiff's counsel wrote to Mitchell regarding the Notice of Intent to Terminate (see Exhibit "11", attached hereto and incorporated by reference) and protesting that the Notice was an obvious act of retaliation against plaintiff for having filed the First Administrative Review since: (a) the First Review was still on-going and many of the purported reasons for termination as set forth on the Attachment were currently being reviewed by Sperling, the factfinder; (b) while the Letter of Warning stated that any further act of insubordination would result in termination, no such act had occurred or was even alleged to have occurred; and (c) certain of the entries on the Attachment (28 through 30) were, at that time, the subject of another on-going review - the

Second Administrative Review.

24. On December 6, 1988, plaintiff filed a response to the Notice of Intent to Terminate and served the response on Chavez.

25. The next day, December 7, 1988, Mitchell (not Chavez) terminated plaintiff's employment with UCI, effective that same day. (See Exhibit "12", attached hereto and incorporated by reference.)

26. The act of UCI in terminating the employment of plaintiff constituted an act of retaliatory discharge in violation of Government Code, Section 12940.

27. As a direct and proximate result of UCI's retaliatory discharge, plaintiff has suffered substantial and continuing damage in an amount not yet determined but believed to be in excess of the

jurisdictional threshold of this Court, and plaintiff will seek leave to amend this Complaint when the amount of such damages has been ascertained.

28. As a further direct and proximate result of UCI's retaliatory discharge, plaintiff has retained the law firm of Drummy, Garrett, King & Harrison to represent her in this matter and has expended, and will continue to expend, sums for attorneys' fees, which she will seek to recover under Government Code, Section 12965.

29. As further direct and proximate result of UCI's retaliatory discharge, plaintiff has been beset by financial worries, has been humiliated and embarrassed by her termination from employment and has experienced severe emotional distress, mortification and

chagrin, all to her substantial and continuing damage in a sum act yet determined but to be proved at time of trial.

30. In engaging in the foregoing acts and conduct, UCI acted knowingly, intentionally, and maliciously, with conscious, wanton and reckless disregard for plaintiff's rights and with the express purpose and intent of retaliating against plaintiff for having filed the First Administrative Review and depriving plaintiff of her due process right to be fully and fairly heard on both her First and Second Administrative Reviews. By reason thereof, plaintiff is entitled to recover punitive damages according to proof at trial.

SECOND CAUSE OF ACTION

(Unlawful Termination Against

Regents and Does 1-15)

31. Plaintiff incorporates by reference Paragraphs 1 through 4 and 6 through 30.

32. MAPP Policy 10 provides that all MAPP members are on either a "regular" or "contract" appointment. For regular members the management and Professional Program Personnel Policies determine the employment relationship between the University and the member. Contract appointments involve separate employment agreements. At all relevant times pled herein, plaintiff was a "regular" MAPP member, as that term is utilized in Policy 10 and defined in MAPP Policy 21. (Copies of MAPP Policies 10 and 21 are attached respectively as Exhibits "13" and "14", and incorporated by reference.)

33. The procedure for terminating a MAPP member is set forth at Policy 85. (See Exhibit "15", attached hereto and incorporated by reference.) It clearly establishes that a member may be terminated only if his performance or conduct does not "justify the continuation of a member's appointment." In short, there must be good cause for termination.

34. The termination of plaintiff, as set forth above at Paragraph 25, was unlawful and without good cause.

35. Plaintiff has exhausted her administrative remedies through the hearing procedures of UCI.

36. As a direct and proximate result of UCI's unlawful termination of plaintiff's employment, plaintiff has suffered the damages set forth above at Paragraphs 27, 29 and 30.

THIRD CAUSE OF ACTION

(Breach of Contract Against Regents and Does 1-15)

37. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30 and 32 through 36.

38. UCI's unlawful termination of plaintiff's employment agreement without good cause, as set forth above, constituted a breach of the agreement.

39. As a direct and proximate result of UCI's breach of the employment agreement, plaintiff has suffered the damages set forth above at Paragraph 27.

FOURTH CAUSE OF ACTION

(Deprivation of Due Process Against Regents and Does 1-15)

40. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38 and 39.

41. As is pled above at Paragraph 19, the First Administrative Review was still in process as of November 23, 1988, when plaintiff was served with a Letter of Warning. It was also still in process as of December 7, 1985, the date of plaintiff's termination from employment and on January 6, 1989, when plaintiff filed a request for review (hereinafter, the "Third Administrative Review") pursuant to MAPP Policies 70 and 85, protesting her termination. (See Exhibit "16", attached hereto and incorporated by reference.)

42. UCI's continued processing of the First Administrative Review compounded the deprivation of due process which had been evidenced, among other things, in having Mitchell conduct the initial level of "review" and denying plaintiff her

right to a factfinder prior to Mitchell's involvement.

43. On December 20, 1988 Sperling, the factfinder under the First Administrative Review, issued her report. It concluded that plaintiff was not discriminated against on the basis of age or sex, that she had not been the subject of a de facto demotion, that she had not been unfairly denied professional development opportunities, and that she had not been harassed emotionally. At least three other issues presented by plaintiff in her First Administrative Review were not even discussed in the Sperling Report: (a) differential treatment of plaintiff vis-a-vis other MAPP program members; (b) under-utilization of her skills; and denial of professional advancement.

44. On January 12, 1989, plaintiff's counsel wrote to Executive Vice-Chancellor Tien, protesting that the Sperling Report was incomplete, emissive, evasive and without substantiation, that it was devoid of factual findings, that it was subjective, and that much of it was irrelevant. (See Exhibit "17", attached hereto and incorporated by reference.)

45. The Sperling Report was a key document since, under MAPP procedures, it is supposed to provide a factual point of reference for further levels of administrative review:

> "If the complaint is not resolved with the decision of the official receiving the report, the member may submit the report and copies of all documents related to the complaint to designated officials at higher administrative levels described in Section B who have not previously responded. Decisions at higher levels must be based on findings of fact. If a decision is based on facts different from those found by

> the factfinder, those must be based on materials in the record." (MAPP Policy 70; Emphasis added.)

46. The Sperling Report, because of its numerous errors and defects, as alleged at Paragraph 44, deprived plaintiff of due process. It failed to provide the objective, verifiable, factual report mandated by MAPP Policy 70.

47. The second level of review was conducted by Executive Vice-Chancellor Tien, following the first level of review by Mitchell (which was improper) and the Sperling Report (which was belated and non-factual). Despite the clear requirement (cited above at paragraph 45) that decisions at higher levels must be factually based, Tien's decision was nothing more than a two sentence statement that he had read certain materials and conclude that plaintiff was not demoted,

denied development opportunities or emotionally harassed. (See Exhibit "18", attached hereto and incorporated by reference.)

48. On January 27, 1989, plaintiff's counsel wrote to Davia protesting again the involvement of Mitchell as the first step in the "review" process and additionally protesting that Tien had refused to provide any factual support for his decision. (See Exhibit "19", attached hereto and incorporated by reference.)

49. The third level of review was initially to be heard by Chancellor Peltason ("Peltason") of UCI. Because certain representations by Peltason and/or his office were a key subject area of the First Administrative Review, plaintiff objected to Peltason's involvement in the review process. (See Exhibit "20",

attached hereto and incorporated by reference.) Subsequently, in approximately June, 1989, it was determined that the third level of review would be conducted by Dr. Lubbe Levin ("Levin"), Assistant Vice President for Employee Relations. Plaintiff is informed and believes and thereon alleges that Levin appointed Mattie Williams, his Special Assistant to conduct the review and make recommendations to Levin for final decision.

50. On July 19, 1989, plaintiff's counsel wrote to Levin, requesting that he be copied with a complete copy of plaintiff's Administrative Review File that had been forwarded to Levin for the third level of review. On August 29, 1989, plaintiff's counsel wrote to Edward M. Opton, Jr. ("Opton"), identifying at

least 67 documents which were supposed to be in the Administrative Review File but were in fact missing. (See Exhibit "21", attached hereto and incorporated by reference.)

51. On September 18, 1989, plaintiff's counsel wrote again to Opton, protesting the untimely manner in which UCI was processing the First Administrative Review (now nearly a year old) and objecting again to the numerous denials of due process which had tainted the entire procedure. (See Exhibit "22", attached hereto and incorporated by reference.)

52. On October 6, 1989, plaintiff's counsel again wrote Opton, objecting to the intolerable delay in handling plaintiff's First Administrative Review. (See Exhibit "23", attached hereto and

incorporated by reference.)

53. Eventually, certain of the documents missing from plaintiff's Administrative Review File were located, yet at least 15 others were not. (See Exhibit "24", attached hereto and incorporated by reference.) The University thereupon granted itself a further extension of time to November 17, 1989 to complete the third level of review.

54. On or about November 15, 1989, Mattie Williams, Levin's Special Assistant, issued a final report accepting the findings the Sperling Report.

55. On or about November 20, 1989 Davia sent a copy of the Williams Report to plaintiff, stating: "Attached is Assistant Vice President Lebbe Levin's decision regarding your Administrative Review . . . . this decision is final and

concludes the review of your complaint."

56. The pattern of due process abuses by the University regarding the First and Second Administrative Reviews also characterized the Third Administrative Review, referenced above Paragraph 40.

57. Filed on January 6, 1989, the Third Administrative Review was essentially placed "on hold" by the University until after the First Administrative Review was concluded on November 2 1989, presumably to avoid the embarrassing result of inconsistent final determinations at the expense of plaintiff's due process right to have her review timely processed.

58. Although plaintiff's employment was terminated by Mitchell (see Paragraph 25), the University determined that

Mitchell was the "University official at the next administrative level" (MAPP Policy 701 who should conduct the first level of "review." As with the First and Second Administrative Reviews, the Third Administrative Review was returned to the very person (Mitchell) who had "prosecuted" the complaint against plaintiff in the first place.

59. On January 30, 1989, Davia sent a letter to plaintiff, stating that Mitchell had completed his review and attaching a copy of his decision. (See Exhibit "25", attached hereto and incorporated by reference.) On February 2, 1989, plaintiff's counsel responded in a letter to Davia, protesting the University's continued disregard for plaintiff's due process rights, demanding a second level of review, and requesting

that the second level of review not be conducted by Tien, who had already participated in Coleman's First Administrative Review. (See Exhibit "26", attached hereto and incorporated by reference.)

60. The University refused to replace Tien in the review process. The University thereupon granted itself extensions of time to March 17, 1989 and April 14, 1989 for Tien to make his final report. Tien, in the meantime, commissioned an individual named Julie Richwine ("Richwine") to conduct "an informal review of the facts related to the termination.of Joan Coleman."

61. on April 14, Richwine generated a Report (hereafter, the "Richwine Report") which found against plaintiff on the charges she had pled in the Third

Administrative Review. On April 18, 1989 Davia sent a letter to plaintiff's counsel purporting to enclose the Richwine Report and giving plaintiff only until April 28, 1989 to respond to It. In fact, the Richwine Report was not enclosed, and plaintiff's counsel wrote a letter of protest on May 1, 1989. (See Exhibit "27", attached hereto and incorporated by reference.)

62. On June 7, 1989, Tien issued his decision affirming the termination of plaintiff's employment. (See Exhibit "28" attached hereto and incorporated by reference.) On June 9, 1989 plaintiff requested a third level of review.

63. The third level of review was conducted by Chancellor J.W. Peltason. The matter was not submitted to him for review by Davia until July 7, 1989. The

University thereupon granted itself extensions of time to August 11, 1989, September 8, 1989, and October 13, 1989, to which plaintiff's counsel objected on due process grounds on September 18, 1989. (See Exhibit "29", attached hereto and incorporated by reference.) Finally, Peltason issued his three sentence decision on November 30, 1989. (See Exhibit "30", attached hereto and incorporated by reference.) It concurred with Tien's findings and conclusion.

64. In the handling of the First, Second and Third Administrative Reviews, UCI committed numerous due process violations both substantive and procedural, as set forth above.

65. As a direct and proximate result of these violations, plaintiff was denied the opportunity to be fully, fairly and

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timely heard with regard to her three reviews and has suffered the damages set forth above at Paragraphs 27, 29 and 30.

FIFTH CAUSE OF ACTION

(Sexual Discrimination Agents Regents, Mitchell, Chavez and Does 1-15)

66. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38, 39, and 41 through 65.

67. Plaintiff alleges that the conduct of Mitchell and Chavez as pled above constituted an unlawful and discriminatory practice of sexual favoritism as prohibited by Government Code § 12940.

68. On or about June 23, 1989, plaintiff filed a Complaint with the California Department of Fair Employment Housing ("FEHA") regarding the

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discriminatory practice alleged above. The FEHA issued a Right to Sue Letter on July 6, 1989. (See Exhibit "31" attached hereto and incorporated by reference.)

69. As a direct and proximate result of the discriminatory acts and conduct of defendants, plaintiff has suffered the damages set forth above at Paragraphs 27 through 30.

SIXTH CAUSE OF ACTION

(Racial Discrimination Against Regents, Mitchell, Chavez and Does 1-15)

70. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38, 39, 41 through 65, and 67 through 69.

71. Plaintiff alleges that the conduct of defendants as pled above constituted an unlawful practice of racial

discrimination against plaintiff, who is black, as prohibited by Government Code § 12940.

72. On or about June 23, 1989, plaintiff filed a Complaint with the California Department of Fair Employment Housing ("FEHA") regarding the discriminatory practice alleged above. The FEHA issued a Right to Sue Letter on July 6, 1989. (See Exhibit "31" attached hereto and incorporated by reference.)

73. As a direct and proximate result of the discriminatory acts and conduct of defendants, plaintiff has suffered the damages set forth above at Paragraphs 27 through 30.

SEVENTH CAUSE OF ACTION

(Age Discrimination Against Regents, Mitchell, Chavez and Does 1-15)

74. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38, 39, 41 through 65, 67 through 69, and 71 through 73.

75. Plaintiff alleges that the conduct of defendants as pled above constituted an unlawful practice of age discrimination against plaintiff, who is over the age of forty, as prohibited by Government Code § 12941.

76. On or about June 23, 1989, plaintiff filed a Complaint with the California Department of Fair Employment Housing ("FEHA") regarding the discriminatory practice alleged above. The FEHA issued a Right to Sue Letter on July 6, 1989. (See Exhibit "31" attached hereto and incorporated by reference.)

77. As a direct and proximate result of the discriminatory acts and conduct of defendants, plaintiff has suffered the damages set forth above at Paragraphs 27 through 30.

EIGHTH CAUSE OF ACTION

(Interference With the Right to Practice a Profession Against Regents, Mitchell, Chavez and Does 1-15)

78. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38, 39, 41 through 65, 67 through 69, 71 through 73, and 75 through 77.

79. At all relevant times pled herein, plaintiff was engaged in the profession of providing administrative services and leadership at UCI and had the right to continue the pursuit of such a lawful profession without unjustified and

unwarranted interference by defendants.

80. By engaging in the acts and conduct alleged above, defendants have unlawfully interfered with plaintiff's right to pursue her lawful profession.

81. As a direct and proximate result of defendants' unlawful interference, plaintiff has suffered the damages set forth above at Paragraphs 27, 29 and 30.

NINTH CAUSE OF ACTION

(Willful Misconduct Against Regents, Mitchell, Chavez and Does 1-15)

82. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38, 39, 41 through 65, 67 through 69, 71 through 73, 75 through 77, and 79 through 81.

83. In engaging in the acts and conduct alleged above, defendants acted with reckless disregard for the probable

consequences of their actions and with reckless disregard for the rights of plaintiff.

84. As a direct and proximate result of defendants' willful misconduct, plaintiff has suffered the damages set forth above at Paragraphs 27, 29 and 30.

TENTH CAUSE OF ACTION

(Conspiracy Against Mitchell, Chavez and Does 16-50)

85. Plaintiff incorporates by reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38, 39, 41 through 65, 67 through 69, 71 through 73, 75 through 77, 79 through 81, 83 and 84.

86. On information and belief, at various times throughout 1988 and 1989, defendants Mitchell, Chavez and Doe conspirators 16 through 50 knowingly and willfully conspired and agreed among

themselves to interfere with plaintiff's right to practice her profession, to discriminate against her, to accord preferential treatment to Chavez, to deny plaintiff a fair opportunity to be heard fully and timely in her administrative reviews, to retaliate against her for filing the First Administrative Review, and to den her professional advancement opportunities.

87. As a direct and proximate result of defendants' conspiracy, plaintiff has suffered the damages set forth above at Paragraphs 27, 29 and 30.

ELEVENTH CAUSE OF ACTION

(Negligent Interference With Prospective Advantage Against Regents, Mitchell, Chavez, and Does 1-50)

88. Plaintiff incorporates by

reference Paragraphs 1 through 4, 6 through 30, 32 through 36, 38, 39, 41 through 81, 83, 84, 86 and 87.

89. At all times pled herein, plaintiff enjoyed a national reputation in her field as well as certain valuable business and economic relations with such organizations and entities as the College Board, for which she served as a consultant.

90. In engaging in the foregoing wrongful acts and conduct, defendants, and each of them, acted negligently, carelessly, and in breach of their duty owed to plaintiff in that defendants knew, or should have known that their acts and conduct would result in a substantial loss and damage to plaintiff through a tarnishing of her national reputation and an interference with the valuable business

and economic relations pled above.

91. As a direct and proximate result of defendants' unlawful conduct, plaintiff has suffered the damages set forth above at Paragraphs 27 and 29.

WHEREFORE, plaintiff prays for damages against defendants, and each of them, as follows:

A. On the First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Causes of Action, for emotional distress damages, and punitive damages.

B. On the First, Fifth, Sixth, Seventh, and Eighth Causes of Action, for attorneys' fees.

C. On the Fifth, Sixth and Seventh Causes of Action, for reinstatement in her previous position or at a comparable position within the University of

California system.

D. On all Causes of Action, for damages according to proof, costs of suit incurred, and such other and further relief as the Court deems just and proper.

DATED: July 2, 1990

DRUMMY GARRETT KING & HARRISON
DAVID B. CARROLL

By: /s/
DAVID B. CARROLL
Attorneys for Plaintiff,
JOAN E. COLEMAN

IRVINE VICE CHANCELLOR - STUDENT AFFAIRS

June 30, 1988

JOAN COLEMAN

RESEARCH & PLANNING ANALYST

Re: Job Description and Reporting Relationship

The revised job description for your position, which I summarized in our meeting on June 28, 1988, will be finalized by July 9, 1988 and it will represent those responsibilities which best respond to the long-term needs or the division for analytical support to the Office of the Vice Chancellor-Student Affairs in the areas of research, evaluation and planning.

In view of these responsibilities, you will be permanently assigned to report to the Director of Resource Planning for Student Affairs, effective July 18, 1988.

/s/

Horace Mitchell
Vice Chancellor-
Student Affairs

HM:hc

cc: Bernadette Chavez
Director of Resource Planning

EXHIBIT "1"

IRVINE VICE CHANCELLOR - STUDENT AFFAIRS

July 1, 1988

BERNADETTE CHAVEZ

EXECUTIVE ASSISTANT

Re: Additional Title

In recognition of your continuing responsibilities related to resource planning, you are hereby given the additional title of Director of Resource Planning for Student Affairs effective July 1, 1988. As part of this role, you will serve as the supervisor of the Research and Planning Analyst position effective July 18. 1988.

/s/

Horace Mitchell
Vice Chancellor
Student Affairs

HM:hc
cc: Student Affairs Managers

EXHIBIT "2" APP-68

POLICY 70 July 1, 1987

Administrative Review

A. COMPLAINTS

A Management and Professional (MAP) Program member is expected to discuss with the member's immediate superior, conditions and actions which may adversely affect the member's employment.

B. REQUESTS FOR REVIEW

If the concerns regarding conditions and actions cannot be resolved through discussions with the member's immediate superior, the member may submit a request for review to the University official at the next administrative level. A request for review shall be in writing, shall contain copies of all relevant

documents, and be received within 30 calendar days of the date the member could be expected to know of the condition or action which gave rise to the request. A written response to a request for review shall be made by the official to whom it is submitted. If the complaint is not resolved at that level, a new written request for review may be submitted to designated officials at higher administrative levels pursuant to campus procedure.

C. COMPLAINTS REGARDING TERMINATION, DISCRIMINATION, OR MEDICAL SEPARATION

If the condition or action which adversely affects the member's employment involves termination of appointment (Policy 85, Termination of Appointment), an allegation of

discrimination (Policy 12, Nondiscrimination), or medical separation (Policy 78, Medical Separation), the member at any step, after conclusion of the review by the member's immediate superior, request in writing that the Chancellor or the Chancellor's designee appoint a factfinder. Such a request shall cause the process described in Section B above to be suspended pending the factfinder's report.

The factfinder shall be selected from outside of the department where the action challenged was taken. The factfinder shall be empowered to take whatever steps are reasonably necessary to investigate the facts, including providing participants an

opportunity to present information and to comment on information provided by others, and render a written report. If the complaint is not resolved with the decision of the official receiving the report, the member may submit the report and copies of all documents related to the complaint to designated officials at higher administrative levels described in Section B who have not previously responded. Decisions at higher levels must be based on findings of fact. If a decision is based on facts different from those found by the factfinder, those findings must be based on materials in the record.

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

September 20, 1988

VIA FEDERAL EXPRESS

Dr. Chang Lin-Tien

Executive Vice-Chancellor

University of California, Irvine

Room 509, Administration Building

Irvine, CA 92717

Re: Joan E. Coleman

Dear Dr. Tien:

Please be advised that I am writing on behalf of Joan E. Coleman, Research and Planning Analyst (Student Affairs) at the University of California, Irvine. After many years of meritorious service to the University, Ms. Coleman was recently assigned a position under Bernadette M. Chavez, Executive Assistant to the Vice-Chancellor of Student Affairs. While the

assignment was characterized as a "promotion" by the University, it was in reality nothing of the kind. At the time Ms. Coleman was told of her assignment (which was approximately June 30, 1988) Ms. Chavez was not a line person but a staff person at the University. It was only after the fact that Vice-Chancellor Mitchell apparently conferred upon her the additional title of "Director of Resource Planning for Student Affairs," a title which appears at least in part to have been a "role" created so that Ms. Chavez could "supervise" Ms. Coleman.

It is not my purpose in this letter to review the history of Ms. Coleman's attempts to clarify her University status with Vice-Chancellor Mitchell. It <u>is</u> my purpose, however, to address the University's subsequent attempts to muzzle

Ms. Coleman and prevent her from seeking an informal resolution of her job dispute with the University. Recently, Bernadette Chavez wrote to Ms. Coleman regarding a conversation between the two of them concerning certain memoranda written by Ms. Coleman to Vice-Chancellor Mitchell, all of which addressed Ms. Coleman's concerns about the inequity of her treatment at the University. If I interpret Ms. Chavez's August 31, 1988 letter correctly, it constitutes a clear attempt to interfere with an employee's right to question her treatment by her employer and to seek an informal resolution of allegedly inequitable treatment. To tell an employee that it is "inappropriate" for her "to spend work time and clerical assistance" in contesting the issue of fair employment

treatment is intolerable. Furthermore, when Ms. Coleman asked for a specific personnel policy which supported such an idea of inappropriateness and when she raised concerns about why such conduct was not appropriate (concerns which even Ms. Chavez deemed "legitimate"), she was merely copied with Policy No. 70 of the Management & Professional Program Personnel Policies, which is clearly not responsive and by no means establishes that it is "inappropriate" for an employee to protest her inequitable treatment as Ms. Coleman has done.

In any event, Ms. Chavez's letter (I am enclosing a (copy for your reference) clearly indicates that the appropriate procedure for Ms. Coleman to follow at this point is to file a Request for Review under Policy No. 70. The purpose of this

letter is to inform you that Ms. Coleman is in the process of preparing such a Request for Review and that it will be delivered within thirty days of August 31, 1988, the date of Ms. Chavez's letter. If it is your position that this is not the applicable thirty-day time frame under Policy No. 70 or that you are not "the University official at the next administrative level "to whom the Request for Review must be submitted, I ask that you inform me <u>immediately</u> in order that Ms. Coleman can take appropriate steps. Finally, any continued attempts by the University to stifle Ms. Coleman in protesting her employment situation at the University will be regarded as a willful attempt by the University to interfere with Ms. Coleman's right to demand fair treatment at the hands of her employer.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING &

DBC:kaw
encl.
cc w/encl.: Edward M. Opton, Jr., Esq.
Office of the General Counsel

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

November 3, 1988

Barbara Davia, Manager
Labor/Employee Relations
University of California, Irvine
Irvine, CA 92717

Re: Request for Administrative Review of Joan Coleman
C-MP-889-02

Dear Ms. Davia:

I am in receipt of your letter of October 27, 1988 to Joan Coleman regarding her Request for Administrative Review. It is my understanding that Ms. Coleman is going to request a second level of review and that she will do so today, within the timeline provided by Management and Professional Program Policy 70 (hereafter,

MAP 70).

I am concerned about two issues in regard to her Request for Administrative Review. First in your letter of October 27 you state: "If your written request for further review is not received by the above date, your Administrative Review file will be closed." Do I take this to mean that the "appropriate University official at the next higher administrative level of management" (see Map 70.B (1)) has reviewed the first Request for Administrative Review and has made some adjudication of the merits and, as a consequence, denied the Review Request? Who undertook the Review? Who made the decision to deny the Request for Review and when? Where is there some statement or ruling to that effect? All your letter states is that Chancellor Horace Mitchell

has completed his review of Ms. Coleman's complaint and attached his decision." That may be so, but Horace Mitchell is the individual about whom Ms. Coleman is complaining. He is clearly not the "appropriate University official at the next-higher administrative level of management" charged with the responsibility of ruling upon Ms. Coleman's Request for Review. If I understand the process the University has followed regarding this Request for Review, it is a little like a plaintiff filing a lawsuit against a defendant and then having the defendant sit as judge and reach a decision. How that is consistent with anything approaching due process, I really don't know.

Second, I fail to see how this Administrative Review file can be closed

even in the absence of a Request for Further Review from Ms. Coleman. In her original Request she specifically asked that a fact finder be appointed to look into this matter. That request is absolutely consistent with MAP 70.C. Furthermore, although she has been told that a fact finder is not appointed until after the three levels of Review are exhausted, that is not what MAP Policy #70 states nor is it consistent with MAP Policy #70 as I understand it. MAP Policy #70 is absolutely silent an the point at which a fact finder is to be appointed. From previous versions of MAP 70, it appears that a fact finder could have been appointed at any stage in the procedure and, indeed, if a fact finder were appointed the review process would be automatically halted, awaiting an outcome

of the fact finder's investigation. Furthermore, MAP Policy 70.B(6) provides: "If the review at any of the above steps is at the level of the Chancellor, the decision at that step shall be final." If Ms. Coleman were to go through the three levels of review and if the third level were at that of the Chancellor and his decision (assuming it were negative) was final, would she then still be entitled to a fact finder? Or would the University then take the position that the Chancellor's decision was "final" in the sense that she is then no longer able to avail herself of a fact finder?

I believe it is in Ms. Coleman's best interests to request a Second Level of Administrative Review, so as to comply with the literal requirements of your letter and thereby protect herself with

regard to procedural due process. I also feel, however, that she is entitled to have a fact finder appointed now and that your office has no authority to close this administrative file until such time as the fact finding process is completed.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY, GARRETT KING
& HARRISON

DBC:kaw

cc: Edward Opton, Esq.

UNIVERSITY OF CALIFORNIA, IRVINE

[LETTERHEAD]

ADDRESSEE ONLY

Ms. Joan Coleman

4261 Margarita Street

Irvine, CA 92714

Re: Request for Administrative Review

#C-MP-889-02,

Filed September 29, 1988

Dear Ms. Coleman:

Your request for further review, dated November 3, has been received and will be processed. The next step involves appointment of a factfinder, who will contact you and your representative in the fact gathering process. The report of the factfinder will then be made available to you both and will be forwarded to the next level of review.

Attached is a copy of MAP Policy 70. We

have interpreted the first paragraph of C to mean that a factfinder, if one is requested, is appointed after conclusion of the first step of the review. I explained to Mr. Carroll when I spoke with him on October 18 that, should Dr. Mitchell's response not resolve the matter, the next step would be appointment of a factfinder.

Please let me know if you have any questions about the process.

Sincerely,

/s/

Barbara Davia, Manager
Labor/Employee Relations

Attachment

cc: David B. Carroll
Horace Mitchell

A. COMPLAINTS

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B. REQUESTS FOR REVIEW

If the concerns regarding conditions and actions cannot be resolved through discussions with the member's immediate superior, the member may submit a request for review to the University official at the next administrative level. A request for review shall be in writing, shall contain copies of all relevant

documents, and be received within 30 calendar days of the date the member could be expected to know of the condition or action which gave rise to the request. A written response to a request for review shall be made by the official to whom it is submitted. If the complaint is not resolved at that level, a new written request for review may be submitted to designated officials at higher administrative levels pursuant to campus procedure.

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If the condition or action which adversely affects the member's employment involves termination of appointment (Policy 85, Termination of Appointment), an allegation of

discrimination (Policy 12, Nondiscrimination), or medical separation (Policy 78, Medical Separation), the member at any step, after conclusion of the review by the member's immediate superior, request in writing that the Chancellor or the Chancellor's designee appoint a factfinder. Such a request shall cause the process described in Section B above to be suspended pending the factfinder's report.

The factfinder shall be selected from outside of the department where the action challenged was taken. The factfinder shall be empowered to take whatever steps are reasonably necessary to investigate the facts, including providing participants an opportunity to present information

and to comment on information provided by others, and render a written report. If the complaint is not resolved with the decision of the official receiving the report, the member may submit the report and copies of all documents related to the complaint to designated officials at higher administrative levels described in Section B who have not previously responded. Decisions at higher levels must be based on findings of fact. If a decision is based on facts different from those found by the factfinder, those findings must be based on materials in the record.

IRVINE: VICE CHANCELLOR - STUDENT AFFAIRS

November 3, 1988

ADDRESSEE ONLY

Ms. Barbara Davis, Manager

Labor/Employee Relations

Re: Request for Administrative Review

#C-MP-889-02

Filed September 29, 1988

Dear Ms. Davia:

I am requesting review of my complaint at the next level of review in order to protect myself in relation to procedures. Also, I am requesting that a factfinder be assigned to review my complaint at the initial level. You will note that this request was made by me in my request for Administrative Review on September 29, 1988. I have heard nor received nothing in response to this request. When I inquired about this procedure Personnel

informed me that the factfinding process comes at the end of the review proceedings, however, MAPP's Administrative Review Policy #70 does not state that three or successive levels of review are required before a factfinder can be assigned.

The postponement of the factfinding process until the third or the end of the review process is not stated in MAPP's Administrative Review Policy 70, and it seems to be in conflict with this policy since findings at the third or last level (the Chancellor) are binding. The previous Administrative Review policy (printed in the current handbook) requires that where a factfinder has been requested the Administrative Review process be halted until the factfinding process is completed so that decisions at the next

level and higher levels can be based on the findings of fact and not allegations. Vice Chancellor Mitchell's response to my complaint focuses on misrepresentation of fact and allegations that have not been substantiated.

I am requesting that a factfinder be assigned to review my complaint at the first level and that the findings be binding on other levels of review.

Sincerely,

/s/

Joan E. Coleman
Research and Planning

IRVINE PERSONNEL OFFICE

November 30, 1988

ADDRESSEE ONLY

PENNY SPERLING

AMBULATORY CARE

ROUTE 87 - UCIMC

RE: Extension of Time Limit

MAP Administrative Review

This is to confirm that your request for an extension of time to December 20, 1988, has been granted in order for you to complete the factfinder's report.

/s/

Barbara Davia, Manager
Labor/Employee Relations

cc: Joan Coleman
David B. Carroll
Horace Mitchell

EXHIBIT "8" APP-94

November 23, 1988

JOAN COLEMAN

RESEARCH AND PLANNING ANALYST

Re: Written Letter of Warning

Over the past several months we have discussed problems with your being uncooperative, argumentative, demanding and at times intimidating. My concerns were also communicated tb you in my memos of October 3, 1988 and November 7, 1988 (attached) .

This continued inappropriate behavior culminated in an act of insubordination that occurred on November 19, 1988. You came to my office and presented me with a memo to managers and Mr. Fullilove regarding his December 6, 1988 presentation that I asked you to prepare and distribute. Attached to the memos was an approval form you had prepared, and you

asked me to sign the form. When I told you that I was not going to sign the form, you said you would not send the memo without my signature on the form. I then asked you to send the memo, and you refused. I told you I was not asking you to send it, I was ordering you to do so; and if you did not send the memo, it would be considered insubordination. You proceeded to the door and while opening it you stated that you would not send the memo and that you did not consider your response an insubordinate act.

The behavior exemplified by this incident has resulted in ineffective relationships with colleagues, support staff, and me. It has been detrimental to the accomplishment of Student Affairs goals and objectives because of the inordinate amount of time that is required to deal

with its effects. It is expected that you will make the necessary behavioral changes in order to establish supportive, cooperative, responsive, and positive working relationships. If you do not, action up to and including dismissal will be taken.

Any further act of insubordination will not be tolerated and will result in your dismissal.

/s/

Bernadette M. Chavez
Executive Assistant and Director of Resource Planning

cc: Horace Mitchell
Lloyd Vierra

ATTACHMENT

Notice of Intent to Terminate

The following chronology of documented correspondence is illustrative of the problems of performance and behavior that have resulted in the decision to issue the Notice of Intent to Terminate to Joan Coleman (Ms. Coleman already has copies of the referenced correspondence):

1) 07/13/88 Coleman refused to meet with Mitchell and Chavez to discuss the transfer in her reporting relationship. This established the pattern of Coleman's refusal to attempt to work effectively with Chavez as her supervisor.

2) 07/19/88 In an attempt to clarify erroneous assumptions made by Ms. Coleman, Vice Chancellor Mitchell and Chancellor Peltason met with Coleman per her request. Chancellor Peltason clarified to Coleman

that he did not promise her a fellowship position in the Chancellor's office.

3) 07/29/88 In a memo addressed to Mitchell, Coleman continued to assert that the Chancellor's Office had promised her a fellowship. This is indicative of an argumentative attitude and an unwillingness to acknowledge that she might have been in error.

4) 08/18/88 Memo from Chavez to Coleman reiterated need to focus upon job description and not commit herself or clerical staff to matters not related to her new duties.

5) 08/31/88 Memo from Chavez to Coleman informed Coleman that it was inappropriate to use clerical staff to continue pursuing matters that were considered resolved. Chavez referred Coleman to the appropriate MAP process.

6) 09/02/88 Coleman requested from Chavez additional clarification regarding the manner in which to proceed with her task of evaluating program evaluation methodologies.

7) 09/22/88 The UCI Ombudsman raised issues about the confrontive manner in which Coleman approached him on 09/16/88 and the threats which she made at that time.

8) 09/27/88 Coleman challenged Chavez based upon her own erroneous understanding of personnel policies and inappropriately copied several UCI administrators. This is indicative of a continuing pattern of failure to appropriately acknowledge Chavez as her supervisor.

9) 10/03/88 Chavez informed Coleman of her concern about Coleman's demanding, uncooperative, and argumentative behavior,

and informed her that it was unprofessional and unacceptable for her to copy individuals who were not involved in the issues being addressed.

10) Coleman responded to Ombudsman in a manner that 10) 10/03/88 was not consistent with the need for her to maintain positive interpersonal relationships with staff.

11) 10/05/88 Coleman demonstrates an inability to understand an assignment and to prioritize her own work and by copying Mitchell again demonstrated a pattern of failure to appropriately acknowledge Chavez as her supervisor.

12) 10/05/88 Chavez informed Coleman that it was not necessary to copy Mitchell in correspondence pertaining to her work.

13) 10/06/88 Chavez informed Coleman that it was necessary to copy Chavez on all

correspondence related to her projects. Subsequently (11/19/88), Coleman confuses this directive as Chavez' wanting to approve correspondence before it is sent.

14) 10/12/88 Coleman refused to respond to Chavez' request for information regarding Coleman's interaction with the Ombudsman. Chavez counseled Coleman regarding the inappropriate use of office stationary.

15) 10/13/88 Coleman continues to be argumentative and uncooperative in communicating with Chavez regarding their working relationship, and continues to copy others.

16) 10/17/88 Coleman continues to be argumentative and uncooperative in communicating with chavez regarding their working relationship. She continues to put the wrong dates on correspondence.

17) 10/31/88 Coleman's inadequate response to Chavez request to revise program evaluation survey resulted in the information not being forwarded to managers.

18) 11/3/88, 11/15/88 Following a discussion with Student Affairs managers, Coleman was requested to provide a draft of correspondence clarifying objectives for pro evaluation. Her draft contained major errors which indicated her failure to understand the substance of the meeting at which she was present. It became necessary for Chavez to complete an initial draft and work with Coleman through several drafts before the package was finalized, delaying managers' receipt of the information in a timely fashion.

19) 11/07/88 Chavez again informs Coleman of her continued argumentative,

uncooperative and demanding communications (10/13/88, 10/14/88) and the negative impact it has an their working relationship. This is demonstrative of the need for Chavez to respond to correspondence from Coleman which contains erroneous information.

20) 11/08/88 Chavez informed Coleman that she did not appreciate her uncooperative behavior. in failing to respond to Chavez' questions which were in response to a request made by the Ombudsman.

21) 11/08/88 Manager responds to Coleman's misinformation (10/25/88) regarding the availability of confidential student data. This is demonstrative of written correspondence that is often unclear and confusing resulting in misinformation and wasted effort on the part of staff.

22) 11/10/88 A second manager responds to confusing correspondence from Coleman regarding needs assessment.

23) 11/11/88 A third manager responds to confusing correspondence from Coleman regarding needs assessment.

24) 11/15/88 Coleman demonstrated uncooperative behavior by having her back turned to Chavez throughout the time Chavez was inquiring about details related to the program evaluation project.

25) 11/15/88 Coleman was argumentative and confrontational in memo to Chavez regarding a MAP grade level review meeting.

26) 11/17/88 Chavez asked Coleman to explain why she entered misinformation on the calendar regarding an 11/16/88 meeting with Chavez.

27) 11/18/88 Coleman demonstrates

inflexibility in addressing the nature of her responsibilities and her specific assignments and continues to demonstrate a confrontive attitude. This is also demonstrative of the inordinate amount of time that is spent clarifying general assignments.

28) 11/19/88 Coleman asked Chavez to sign an approval form which Coleman had developed before Coleman would send correspondence which she had previously (11/15/88) been instructed to send. Chavez indicated that her signature was not necessary since Coleman was expected to carry out the task independently. Coleman refused to follow instructions. Chavez informed Coleman that if she did not follow Chavez' instructions that she would be considered insubordinate. Coleman refused to follow Chavez,

instructions.

29) 11/23/88 Coleman was argumentative, defensive and confrontive in responding to an inquiry by Chavez' regarding misinformation entered in Coleman's calendar. This is an example of dishonesty relating to a distortion of facts.

30) 11/23/88 Chavez gave Coleman a written letter of warning resulting from her insubordinate act of 11/19/88.

IRVINE: VICE CHANCELLOR-STUDENT AFFAIRS

December 2, 1988

JOAN COLEMAN

RESEARCH AND PLANNING ANALYST

Re: Notice of Intent to Terminate

This is to inform you of my intent to terminate your appointment because it is my judgement that you do not possess the ability to execute your responsibilities in a manner that is consistent with our needs for an individual in your role. In addition, your conduct has resulted in a situation in which we do not perceive you to be the helpful, facilitative person that we must have in this critical role which must be responsive to divisional priorities. Such conduct has contributed to the deterioration of morale among staff within the office and the division. As a consequence of your act of insubordination

an November 19, 1988, I issued you a formal letter of warning.

You have not demonstrated an ability to fully comprehend the nature of your role within the UC Management and Professional Program and the Student Affairs Management Advisory Group. Your performance has been such that I spend an inordinate amount of time clarifying general assignments and counseling you about appropriate professional behavior. Your written correspondence is often unclear and confusing, resulting in misinformation and wasted effort on the part of staff. On several occasions, it has been necessary for you to re-issue some of your correspondence because of errors and omissions. You consistently misdate correspondence resulting in confusion about the chronology of events. You

continue to request a level of specificity and documentation about your assignments and interactions which is not consistent with our expectations of an individual with your level of responsibility. When greater specificity is provided, you argue about minor details and complicate our discussions rather than demonstrating a willingness to proactively approach your assigned tasks. This demonstrates an inability to be adaptable and file in carrying out your assignments.

According to the MAP Performance Appraisal Guidelines, a MAP member's responsibilities include: understanding the assigned tasks, knowing the resources available to accomplish the tasks, knowing the factors that will be considered in evaluating their work, making the effort to understand how his/her assigned tasks

are valued and fit into group and University goals, and, if necessary, asking for appropriate information and feedback regarding job duties and performance.

From the very beginning of our working relationship, you began a pattern of refusing to attempt to work effectively with me as your supervisor. Your conduct is not characteristic of good supervisor/ member communications as described in the MAP Performance Appraisal Guidelines. Instead, your behavior is argumentative, resistant to supervision, demanding, and confrontational. While I have verbally, in writing, and in my interpersonal interactions with you demonstrated that I am striving to establish a positive and cooperative professional relationship that is based upon mutual professional trust,

your responses to me have not been reciprocal in nature or demonstrative of efforts to facilitate the establishment of a relationship that forms the foundation for getting the job done expeditiously and efficiently. Furthermore, I consider your rewriting and reediting of correspondence to be manipulative, dishonest and a distortion of facts. You often continue to act on your erroneous assumptions even when contrary information is clearly provided to you. Your refusal to acknowledge that perhaps your assumptions could be wrong is indicative of a lack of ability on your part to reassess the validity of your assumptions.

You have not demonstrated, since July 18, 1988, that you can perform your duties in a fashion consistent with my expectations

and the needs and priorities of the division. Illustrative examples which form the basis for my conclusions are contained in the attachment. MAP Policy 85 specifies that a member has five calendar days in which to respond to a Notice of Intent to Terminate. Therefore, you have the right to respond to this notice either orally or in writing no later than 12:00 noon on Wednesday, December 7, 1988.

/s/

Bernadette M. Chavez
Executive Assistant and Director of Resource Planning

Attachment
cc: Vice Chancellor Mitchell
Assistant Vice Chancellor Espinoza
Barbara Davia, Personnel
Lloyd Vierra, Personnel

December 6, 1988

BERNADETTE CHAVEZ

EXECUTIVE ASSISTANT AND DIRECTOR OF RESOURCES

Re: Response to Notice of Intent to Terminate

The following is my response to the chronology of documented correspondence which you allege to be illustrative of the problems of performance and behavior that, you identify as the basis for the Notice of Termination you submitted to me on 12-2-88.

1. My records and Vice Chancellor Mitchell's colander show that no meeting was scheduled on 7-13-88. I asked Vice Chancellor Mitchell if we could postpone the discussion of the transfer in reporting relationship until we had the opportunity to meat with the Chancellor to

obtain clarification on the future availability of the three job options Vice Chancellor Mitchell and I had discussed He has a memo to this effect. Vice Chancellor Mitchell agreed to this, and the meeting was rescheduled for 7-28-88 after the meeting with Chancellor Peltason which took place on 7-19-88.

2. and 3. I have never stated that "the Chancellor promised me a fellowship". Those are Vice Chancellor Mitchell's words. I have indicated that in discussions with the Chancellor and Ruth Ann abdouch, they indicated that they were interested in providing me with "other professional development opportunities which would mirror or be similar to the ACE Fellowship activities". (See my memo of July 29, 1988 to Vice Chancellor Mitchell written after the meeting with

the Chancellor on 7-19-88.) Since both the above possibility and a possible position in the Office of Education were suggested to me by the Chancellor's Office, I felt it was important to obtain clarification there. After receiving clarification from the Chancellor regarding the statements made by him and Ruth Ann Abdouch in the 12/4/87 meeting I thanked him for taking the time to meet with me and asked to be excused from the meeting.

These items are the subject of an Administrative Review filed 9-28-88, and have been submitted to a factfinder for adjudication.

It appears that the Chancellor's Office was, in fact, considering bringing on someone for a one year assignment. When Vice Chancellor Mitchell refused to indicate his support for me in one of the

job possibilities discussed above, I note that Leslie Millerd of the Women's Center was asked to work with the Chancellor office on a one year assignment to address minority concerns.

4. I find no memoranda relating to this item. When on 12-6-88 I asked your secretary for a copy of the memo you cite, she said that she was not sure but that when she checked with you, you said that you "thought the chronological listing got messed up". She then gave me a copy of a memo dated 8-15-88 regarding a "Luncheon Meeting: Tuesday August 9, 1988". and said that she thought that this might be the memo to which item number 4 referred.

I believe that a Notice of Intent to Terminate is a serious piece of correspondence and should be factual and precise; therefore, I am requesting that

you provide me with the specific documentation for this item indicating in writing any correction that is necessary.

5. This item is currently the subject of Administrative Review and has been submitted to a factfinder for adjudication.

6. The request in question was made when managers informed me that the process that you had asked them to follow in the Evaluation Survey form you prepared was in conflict with the instructions you and Vice Chancellor Mitchell had given them earlier (in meetings where I was not present). You will note that in an effort to be of assistance I offered options for Your consideration. I clearly was not asking you how to do my Job (program evaluation). I was informing you that

managers were confused by your inconsistent instructions and was making some recommendations as to how you might proceed to address the situation. The fact that you did not understand this is an example of the kind of fragmented perception on your part that has resulted in communications problems in our working relationship.

7. Mr. Wilson's statements are hearsay. He has no evidence to support his allegations. I have discussed this point with you several times. The fact that you continue to bring it up in our supervisory conferences is evidence of your continued harassment of me. Also, this point is the subject of Administrative Review and has bean submitted to a factfinder for adjudication.

8. Every UCI employee has the right to

receive correct information regarding Personnel policies and therefore, to be informed of the sections of MAPS or other personnel policy on which an action is based. Asking for clarification of personnel policy is not an indication of failure to acknowledge you as my supervisor".

It appears that you believe that being a supervisor makes you infallible or that you do not have to abide by University personnel policy. Your continuing disregard for personnel policy is supported by the fact that your secretary has filed a grievance against you for acting in violation of personnel policy. As of this date you still have not given me with copies of personnel policy related to my request; consequently, there is no evidence to support your claim of "my

erroneous understanding".

9. I deny that I have been demanding, uncooperative, and argumentative in our working relationship. in my conversations and communications I have used the standard language, i.e. " I would like to ask that ", "I request that", "I respectively ask that" or "I would appreciate your providing me with", that is found in most university memoranda.

I have had some 15 years of administrative experience in higher education. I attempt to operate with a high degree of expertise and professionalism at all times. Also, I have sought to obtain the clear consistent information that I need to carry out my duties effectively. I find that frequently you are inconsistent in your instructions or you simply do not understand what I am saying or you

misunderstand or focus on some minute part of the total picture I am trying to convey. I recognize that this may be due to the considerable difference in our background and experience in the areas in which I have been assigned to work. Also, it has been my experience that you do not view support and facilitation as part of your supervisory responsibilities. I have cooperated with you in completing assignments and have assisted you in completing tasks not in my job description such as the SAA evaluation.

There is no evidence that I have been uncooperative, argumentative or demanding with Student Affairs managers. My relationships with the SA managers with whom I have had the opportunity to work have been cooperative, flexible and supportive. I have provided technical

assistance where needed and/or requested and, when doing so, I have been careful to respect managers concerns and priorities. I have also taken the initiative to provide managers with resource information and suggestions in relation to their interests and responsibilities. Where managers have written to express concerns or request clarification about program evaluation or needs assessment, (the three instances you cite), I have met with them personally to resolve matters to their satisfaction. (See memoranda to Norma Grundy dated 11-18-88 and to Sally Peterson dated 1-23-88.) Also, I met with Karen Bocard on 12-1-88 and resolved her concerns. She was not aware of my new responsibilities as they related to her unit.

Regarding the additional allegation you

make in this item I think that it is important to recognize that as an employee I have a right to copy persons whose responsibilities relate to the contents of my correspondence, or those persons whom I would like to be informed of the matter in question. After all, this is a University, not a dictatorship.

10. The matter to which you refer has nothing to do with my responsibilities in Student Affairs. First of all, Mr. Wilson is not a member of Student Affairs. Secondly, I am wandering why a memo I wrote in response to Mr. Wilson's allegations are matter for you review since it did not relate to you, Student Affairs or my assigned duties. Thirdly, the matter in question relates to allegations. If there is no evidence to support Mr. Wilson's claim, then you have

no basis on which to claim that I have not been positive in my relations with him.

Since Mr. Wilson initiated the correspondence, I had a right and obligation to present the facts as I saw them. I find it interesting that you as my supervisor, continue to focus on this item; I wonder if Mr. Wilson's supervisor has given such a non-issue so much attention.

Finally, I would like to point that I have positive working relationships with the regular Student Affairs staff in our office. Your presentation of this matter is misleading and is another example of harassment.

11. and 12. In reviewing my Chron file, I find no correspondence dated 10-5-88 relating to this item, therefore, it is difficult to respond to your charge.

Please provide me with documentation for the correspondence to which you refer in your item number 11 in your Notice of Intent to Terminate.

There is a memorandum dated 10-4-88 which relates to a budget document you discussed with me in one of our supervisory conferences. At that time you said that you wanted me to review it and make recommendations, but then, you took it back before the end of the meeting. Since you have recently prioritized my assignments and assigned due dates I felt that it was important to determine if you still wanted me to pursue the analysis and where it stood in those priorities you have established for the duties in my current lob description. After I made this request, you did in fact return the document to me and assign a priority

to the analysis of the document. I think that frequently you misunderstand my inquiries. Since you gave me the assignment only you know by which date you need the information. Surely, as a supervisor, you must realize that establishing the due dates for my assignments are not my responsibility, it is yours. Once you have given me these dates I have prioritized my daily work to complete assigned tasks within the deadlines.

I have copied Vice Chancellor Mitchell in correspondence which relates to information that I have discussed with him earlier or about which I think that it is important that he be current. For example, I copied him on the memos, letters and press releases that came in after the Linkages meeting in August,

since the Since the Black Administrators group has expressed an interest in this program and often asks questions about the program. He was copied on my Progress Report dated 9-30-88 because I believed that it was important that he have first have knowledge about my performance since he had told a number of administrators and faculty members incorrectly that I did not want to do or was not doing my present job.

Neither of the matters you cite in number 11. and 12. support your claim that I am unable to understand an assignment. In this instance you failed to make a complete assignment, so it was necessary to ask for additional information.

13. You are in error in your statement in this item. I did not confuse your directive to copy you on all

correspondence. After the memos to SA managers regarding services available from Analytical Studies (dated 10-25-88) was sent out and you thought initially that you had not approved it, you told me that you wanted to review all my correspondence before it was distributed. (Later you recalled that you had approved distribution of the Analytical Studies memo.)

14. You asked me to share my confidential response to a confidential inquiry from the Chancellors Executive Assistant. I said that I did not feel comfortable in doing this given the confidential nature of the correspondence. I asked that you make the request to Ms. Abdouch directly. You informed me that you did this. This was not an instance of uncooperative behavior. In my note to regarding this

matter, I state clearly that " It was not my intent to be uncooperative," but to protect confidentiality.

This confidential correspondence did not relate to you, my job responsibilities, nor the area of Student Affairs.

15. I deny that I was being uncooperative and tentative in the memo cited. The memorandum to which you refer discusses my efforts to list a positive working relationship with you and points out some factual examples of the kind of interaction on your part that generate mistrust in our working relationship (i. e. your continued harassment regarding the Ron Wilson memo which was a non-issue in relation to the priority of my job responsibilities, your deliberate withholding of your concerns in a supervisory conference where we could have

discussed and resolved matters, and your sending me a memo at the end of the day bringing up additional concerns about this same matter.) It is interesting that when a supervisee expresses such serious concerns, you as a supervisor do not feel any responsibility to address them. This is another example of your lack of understanding of the role of a supervisor in communicating support and trust in our working relationship. You say that you want a positive relationship, but your actions contradict this.

16. I find no correspondence relating to the memo you cite; please provide me with documentation regarding this item. I wish to point out that errors in typing do occur from time to time. I cite examples. Your Letter of Written Warning dated 11-23-88, claims that I was insubordinate

in meeting on 11-19-88, a Saturday, That date is incorrect. Our meeting occurred on 11-18-88. Also, you give incorrect dates in items number 1 and 4 of your Notice of Intent to Terminate.

17. In line with your request, I provided you with a revised shorter version of your original evaluation survey based on the feedback that I received from managers and based on my expertise in this area. I pointed out that since many of the managers already had submitted reports based on the first survey form, that any revision of that form "mid-stream" should request essentially the same information so that we could report on our efforts across units with uniformity and consistency. To date you have not indicated what was "inadequate" about the revised form which was designed to obtain

essentially the same information as the initial form and the information you requested. You decided, finally, to discuss program evaluation at a SAMAG meeting on 11-1-88 and to delay sanding a revised form until after the meeting.

18. At your request I coordinated and distributed the Program Evaluation survey you developed on 10-6-88. When managers expressed concern about the form, you decided to send out additional material. On 11-2-88 when we discussed possible approaches, you specifically asked me to write down a statement similar to the philosophy that I had just expressed verbally. You said you wanted it as an insert to be included with other materials. When I gave you a draft statement you said that you did not want that approach. A review of the draft

statement I prepared does not indicate "a lack of understanding of Student Affairs or the substance of the SAMAG meeting". It does indicate that I recommended a historical paragraph introducing the request we were making. This is a common approach in facilitating understanding of program evaluation. The one page statement concludes with a statement which is clear in its relationship to what we were asking managers to do. When you indicated that you had changed your mind about what you had asked me to do I concluded that this was yet another instance in which you sought, deliberately, to create another instance of something that was not "correct".

You are incorrect in stating that you worked with me through several drafts. I provided you with one draft and one final

copy of the technical insert on program evaluation well before your package of materials was ready to be distributed. This package was supplementary information. It was not expected by managers, many of who had submitted their reports already. You established no deadline for distribution of this material.

19. In our meeting on 11-9-88 you indicated that this memo was your response to my memos dated 10-13-88 and 10-14-83 expressing concern about the mistrust you generate when you manipulate information and do not provide simple and direct answers to concerns regarding policy and other issues. Again, you did not respond to my concerns but, instead defended your actions at length. This indicated to me that you were not interested in direct

communication or in building trust in our relationship. This is not evidence of my being uncooperative, etc. but another instance of your refusal to understand what I am asking and to respond in a helpful manner.

20. This item appears to be a repeat of the point you mention in item number 10 and 14. You appear to be using this non-issue over and over again to expand your list of complaints. This is clear harassment.

21. and 22. A review of the memo in question, Services Available Through the Office of Analytical Studies, dated 10-25-88 shows the following:

At no time do I state that I, personally, (or any one else for that matter) will be conducting research on recipients of counseling services, or merging data on

this topic. Counseling was one of five examples given where OAS could provide assistance to managers. I would like to point out that I checked with the Director of the Counseling Canter who felt that the statement was clear. The manager who expressed concern recognized in later discussion that perhaps she had not read the material closely, but had responded to what she thought might be an issue of confidentiality.

As I point out in my response above, I discussed this matter with the manager in question and resolved it to her satisfaction.

There is no information in this memo; it was cleared by the Director of Analytical Studies. Unless you can cite other evidence for your allegation, can only assume that this is another instance of

"witch-hunting".

23. and 24. You seem not to realize that these are normal staff responses given the fact that you and Vice Chancellor Mitchell have failed to inform managers that I have been assigned to develop a needs assessment instrument and will be discussing it with them. If needs assessment is a high priority as you and Vice Chancellor Mitchell claim, why have my duties in this area not been so communicated to those managers which he supervises and with whom I will need to interact? That is his responsibility. The fact that I was able to resolve and clarify each of these concerns to managers satisfaction is evidence of my flexibility, and cooperation and skill.

24. You cite no specifics for this allegation; therefore, I am unable to

respond to it. I do not recall any such incident.

25. It is appropriate to ask that I be canvassed (as were others) regarding available meeting times so that I could attend a MAPS meeting which you were planning, especially since I was on a one year leave of absence when the program began and did not have the benefit of the orientation other MAPS staff had.

26. You went to my calendar, read a note I made to remind myself of something and then decided without discussing it with me, that what I wrote was misinformation! Misinformation for whom? I did not address any communication to anyone. Clearly, I can write whatever I find helpful in my calendar. This is another example of your excessive monitoring and harassment.

This item relates to a matter that is under Administrative Review (harassment) and has been submitted to a factfinder for adjudication.

27. This was not a confrontation. As I state in my memo of this date I felt that you had placed me in a "no-win" situation and I was attempting to avoid situations like those you generally set up in an attempt to cite me for an infraction. Refer to my memo of 11-18-88.

This matter is the subject for Administrative Review and a request for review by a factfinder.

28. This data is incorrect as 11-19-88 is a Saturday. Please provide me with the correct date and documentation for this item so that I can respond appropriately. Also, refer to attached response to your Letter of Written Warning, filed as part

of my Request for Administrative Review filed 11-28-88.

This matter is the subject of Administrative Review and a request for review by a factfinder.

29. This item is a repetition of number 26 above. I did not discuss this matter with you on this date, so the behavior you allege could not have taken place. When you asked me about this matter I referred you to my memo responding to your inquiry. The secretary gave you an additional copy of the memo. See my response to item 26 above.

30. I deny that I was insubordinate.

This item is the subject of Administrative Review and a request for review by a fact finder for adjudication.

In summary, I would like to point out that prior to assuming my assigned duties under

you, I worked under MAPS guidelines for 15 months and my performance was rated as more than satisfactory. In this capacity I clearly demonstrated my ability to take initiative, define priorities, communicate clearly and function with minimal supervision. Also, the fact that I have completed all the assigned tasks in my new job description within the designated timelines is evidence of my ability to function affectively at a MAPS level. These assignments as listed in my job description include:

Distribution of the initial program evaluation survey; due 10-31-88, completed 10-18-88.

Preparation and distribution of a summary of data and resources available through the Office of Analytical Studies; due 11-15-88 completed 10-25-88.

As requested, arrangements were made for Robert Fullilove from UCB to conduct an program evaluation workshop on 12-6-88, the first available date.

Development of a system for identification and notification of managers of grant opportunities; revised due date; 11-4-88, completed 11-4-88.

Development of a draft of a Student Affairs Needs Assessment Instrument; due 12-1-88, completed 12-1-88.

With your approval, I began my assigned duties on 9-1-88. You did not give me the complete guidelines with timelines and a description of your expectations until 11-7-88. I find it surprising, therefore, that you are now, barely a month later, informing me of your intent to terminate me. I believe that I have communicated my interest in working effectively with you

and in Student Affairs. I have also urged you to consider the obstacles I have experienced since many of these relate to the lack of clarity among managers about my newly assigned duties, and are not under my control. It is my belief that you have not yet worked to address and resolve this issue which has created communications barrier in our working relationship and our understandings I believe, also, that you have ignored the positive working relationships I have established with managers and the assistance I have provided to them. As stated previously, I have already demonstrated that I have the ability and skills to do MAPS level work, and have been evaluated as "more than satisfactory" in doing so.

/s/

Joan E. Coleman
Research and Planning
Analyst

December 7, 1988

JOAN COLEMAN

RESEARCH & PLANNING ANALYST

Re: Termination of Appointment

After considering your written response to the December 2, 1988 Notice of Intent to Terminate, I have determined that you have not provided any new information which could serve as a basis for changing the decision to terminate your appointment. Therefore, your appointment is officially terminated as of 5:00 p.m. today for the reasons stated in the Notice of Intent to Terminate. You will receive 60 days pay in lieu of notice.

/s/

Horace Mitchell
Vice Chancellor - Student Affairs

EXHIBIT "12" APP-146

cc: Barbara Davia, Employee Relations
Bernadette Chavez, Executive
Assistant and Director of
Resource Planning
Carla Espinoza, Assistant Vice
Chancellor
Lloyd Vierra, Employee Relations

POLICY 10 July 1, 1987

General Provisions

A. APPLICATION OF MANAGEMENT AND PROFESSIONAL PROGRAM PERSONNEL POLICIES

Management and Professional Program Personnel Policies delineate the employment relationship between the University and MAP members with regular appointments. The employment relationship between a member with a MAP Program contract appointment and the University is set forth in an employment contract. Policy 21 defines regular and contract appointments. Insurance, retirement, and other benefits for MAP members are described in separate publications.

B. AMENDMENTS

The President has the authority to amend

the MAP Program Personnel Policies.

C. EXCEPTIONS

Exceptions to MAP Program Personnel Policies may be made only by the President unless such authority has been specifically reserved to The Regents or has been delegated by the President to Chancellors.

D. REDELEGATION OF AUTHORITY

1. Authority delegated by the President to Chancellors may be redelegated by a Chancellor except when redelegation by a Chancellor is specifically limited by Policy. When redelegated, the Chancellor's designee shall have the full authority of the Chancellor. A redelegation shall be made in writing to a particular

position. Copies of the redelegation shall be provided to the Secretary of The Regents, Associate Vice Chancellor-Employee and Labor Relations, and the Director-Coordination and Review.

2. Responsibilities and authorities which are specified by policy to rest at secondary administrative levels are also considered to bc held by the Chancellor as executive head of the campus (Section 100.6 of the Standing Orders of The Regents).

E. IMPLEMENTING PROCEDURES

Chancellors are authorized to establish and are responsible for necessary procedures to implement MAP Program Personnel Policies.

Informational copies of implementing procedures shall be submitted to the Assistant Vice Chancellor-Employee Relations.

F. TERMINOLOGY

The term campus includes the Office of the President. Statements concerning the authority of the Chancellor, as administrative head of a campus, include the President in the President's capacity as administrative head of the Office of the President. References to the President in this Manual are to the President as the executive head of the University.

MANAGEMENT AND PROFESSIONAL PROGRAM

POLICY 21 July 1, 1987

Appointment

A. CRITERIA FOR APPOINTMENT

The applicant who, in the judgment of the hiring authority, possesses the qualifications required to perform the duties of the position most effectively shall be appointed. If two or more applicants are substantially equally qualified, the hiring authority shall give due consideration to meeting affirmative action goals and providing promotional opportunities to University employees.

B. NATURE OF APPOINTMENT

Normally, appointments to the Management and Professional (MAP)

Program are regular appointments; however, in certain circumstances the Chancellor may approve an appointment as a contract appointment.

1. An appointment at 50 percent time or more for an indefinite period is considered a regular appointment and is covered by all MAP Program Personnel Policies.

2. The Chancellor may approve an appointment as a contract appointment under one of the following conditions:

   a. the position is established at less than 50 percent time;

   b. the position is established at 50 percent time or more for a period of up to two

years, or

c. the contract is for a definite period, the position has special salary requirements or unique occupational terms and conditions of employment, and an employment contract is customarily used in the occupation to define the employment relationship.

C. TERMS AND CONDITIONS OF CONTRACT APPOINTMENTS

A contract appointment shall be governed by a written employment contract. The terms and conditions of employment for contract appointments shall be only those specified in Policy 21 and in the employment contract which may include

specified MAP Program Personnel Policies, special conditions, and specified University benefit. In addition:

1. A contract appointment terminates automatically on the expiration date of the employment contract unless prior to the expiration date the contract is renewed in accordance with Section C.2.
2. A contract appointment may be extended and the employment contract renewed upon mutual agreement of the parties; however, contract appointments for temporary positions under Section B.2.b. may not be extended beyond a total of 36 months of employment under

contract.

3. When a member is reappointed to a contract Position or from a contract position to a regular MAP Program position within 30 days from the date of termination of a contract, prior contract service will be included for the purpose of qualifying for UCRS enrollment.

D. AUTHORITY

Authority to appoint an individual to a MAP Program position is vested in the Chancellor.

E. NEAR RELATIVES

The employment of near relatives in the same department may be permitted, upon approval of the Chancellor, when such concurrent employment is considered in the best interests of

the University. For the purpose of this policy, a near relative is defined as a husband, wife, mother, father, daughter, son, sister, brother, and step-relatives and in-laws in those relationships.

POLICY 85 July 1, 1987

Termination of Appointment

A. GENERAL

Due to the high degree of responsibility assigned to Management and Professional (MAP) Program members and the uniqueness of work requirements within the Program, University management must exercise judgment in determining the functional needs and resources of a department and in evaluating the performance and conduct of a member. When, in management's judgment, the needs or resources of a department or the performance or conduct of a member do not justify the continuation of a member's appointment, the member may be

terminated.

B. NOTICE AND DECISION

When an appointment is to be terminated, a MAP Program member shall receive written notice of intent to terminate which shall include a statement of the reason(s) for the intended action, a copy of any materials upon which the termination is based, and a statement that the member has a right to respond orally or in writing within five calendar days. After the member has responded or after five days have passed, management shall review the response, if any, and tell the member of the action to be taken. If the member is to be terminated, there shill be 60 days notice, or pay in lieu of notice, of termination,

except no notice is required in case of misconduct, as determined by the Chancellor.

C. TERMINATION ASSISTANCE

A member whose appointment is terminated may be assisted, at the discretion of the Chancellor, as follows:

1. Assignment of the member to another MAP Program position if such a position is available, the individual is considered qualified to perform the work, and the new assignment is in the University's best interests.
2. Career counseling or outplacement services.
3. Reasonable time off with pay for interviews for other positions both within and outside the

University.

4. Severance pay in the amount of one month of pay for each completed year of continuous University service to a maximum of six months of severance pay. No severance pay shall be provided when termination has resulted from misconduct, as determined by the Chancellor.

D. AUTHORITY

The decision to terminate the appointment of a MAP Program member shall be approved by the appropriate higher administrative level.

UNIVERSITY OF CALIFORNIA, IRVINE

REQUEST FOR ADMINISTRATIVE REVIEW

MAP POLICY 70

Name Joan E. Coleman

Address 4261 Margarita St.

Home Phone (714) 757-5670

Department _____

Work Phone _____

Immediate Superior's Name B. Chavez/H. Mitchell Phone 256-7253

Representative (if any) Atty David Carroll

Phone: 250-1800

Representative's Address: 3200 Plaza Drive, Suite 1200, Costa Mesa, CA

Date of Informal Discussion with Immediate Superior _____

STATEMENT: *State the nature of the condition or action which gave rise to this complaint. Provide the date on which*

you first became aware of the condition or action. Provide copies of any relevant documents pertaining to the complaint. Use additional sheets if necessary.

(SEE ATTACHED)

Remedy requested: Withdrawal of termination, reinstatement, and transfer to one of the departments that have expressed an interest in having me work in their unit.

Employee Signature: /s/ Date: 1/6/89

(To be filled out by Personnel Office)

MAP ADMIN. REVIEW #____ DATE RECEIVED____

I am requesting Administrative Review of the decision to terminate my employment, as stated in Vice-Chancellor Mitchell's notice to me dated 12-7-88.

My dismissal constitutes wrongful termination, and is inconsistent with even fundamental principles of due process. There are numerous irregularities in the procedure, documentation and performance assessment on which the termination was based. Vice-Chancellor Mitchell has made a decision based on incorrect information, hearsay, deliberately-solicited negative comments, trumped-up charges, and non-issues. In fact, the termination of my employment has arisen as a deliberate attempt to retaliate against me for seeking information regarding my job status and for filing a previous Request for Administrative Review.

Finally, the termination is inconsistent with University Affirmation Action policy, President Gardner's recent directive to campus chancellors to work to retain and promote Black faculty and staff, and related MAP policy (85) guidelines and options. I am requesting Administrative Review with emphasis on the points listed below.

1. Ms. Chavez' purported assessment of my ability to carry out my newly-assigned job responsibilities is premature and without foundation. As I pointed out in my response to her Letter of intent to Terminate, I began my newly-assigned duties on 9-1-88. Ms. Chavez' completed guidelines clarifying the goals, objectives and timelines for my performance were not finalized and given to me until 11-7-88, yet I was served with

a Notice of Intent to Terminate Employment scarcely three weeks later, on 12-2-88. Ms. Chavez' statement that I am unable to perform my (new) duties "in a fashion consistent with [her] expectations and the needs and priorities of the division" is therefore premature and unfounded, since her "expectations" were not presented to me until 11-7-88, less than three weeks prior to her Letter of Warning. This premature assessment is just one example of Ms. Chavez' continuing disregard for the spirit and intent of the University's personnel policies. Another is that she prepared a "Letter of Warning" (which is not authorized or required by MAP Policy) which in its final three sentences points only to future conduct as a basis for dismissal from employment, yet only nine days later she served a Notice of Intent

to Terminate Employment. The reasonable inference to draw is that Ms. Chavez was not the slightest bit interested in working with me regarding the newly-completed guidelines of 12-7-88 or of "warning" me with regard to future conduct, but had already formed a plan prior to the Letter of Warning to terminate my employment.

2. Ms. Chavez' assessment of my performance is inconsistent with my past performance in Student Affairs, which as recently as July 1988 was evaluated as above average. It should be noted that if 1 had demonstrated a pattern of behavior similar to that which Ms. Chavez describes, surely Vice-Chancellor Mitchell would have mentioned it in his two evaluations of my performance in Student Affairs in 1985 and 1988. The fact that

he did not, and that both of his evaluations were above average, indicated that I had demonstrated the ability to carry out my assigned duties in Student Affairs in a more than satisfactory manner. A clear example is my assignment from Vice Chancellor Mitchell to chair the Verano Housing Survey Committee and develop an instrument which would provide him with data on which to make budgetary decisions.

This was a highly controversial and politically volatile situation which required the ability to handle conflicting and competing priorities among committee members and also among Student Affairs managers in a nonintimidating and cooperative manner. My successful handling of this assignment in 1987-88, and my performance evaluations by

Vice-Chancellor Mitchell indicate that I have the skills and ability necessary to carry out my assigned duties in Student Affairs. Also, prior to my transfer to Ms. Chavez, Vice-Chancellor Mitchell had assured me that my working relationships in Student Affairs and around the campus were viewed as positive.

3. The assessment on which my termination is based deliberately excludes those positive interactions and strategic planning efforts I have initiated with Student Affairs (SA) managers such as Otto Reyer, Jim Craig, Lisa Cornish, Randy Williams and Bill Anderson. Further, the fact that where managers have raised questions, sought clarification, or made suggestions, I have resolved matters to their satisfaction, totally refutes Ms. Chavez' non-specific allegations regarding

my interactions with SA managers and staff.

4. The assessment on which my termination is based ignores the fact that I completed all the assignments in my new job description within the established or revised timelines listed in Ms. Chavez' memo and attachment of 11-7-88. (I was able to do this in spite of the fact that I experienced constant harassment from Ms. Chavez, and was receiving regular medical treatment for orthopedic injuries, one of which was work-related.) For example, the comprehensive draft of the Needs Assessment Survey which I submitted on 12-1-88 in the midst of receiving and responding to the Written Letter of Warning, etc. incorporated all the recommendations and suggestions I received from managers and is an example of my

ability to complete assigned tasks successfully.

5. Ms. Chavez' repeated references to Ron Wilson, the University Ombudsman, are totally improper. How the episode between Mr. Wilson and me could constitute grounds for termination of my appointment is a total mystery to me, since Ms. Chavez was not privy to any of the events, has no personal knowledge of which took place, and has no means of verifying the accuracy of Mr. Wilson's comments. Moreover, the episode between myself and Mr. Wilson has nothing whatever to do with Student Affairs or with my job performance and is therefore a non-issue.

6. I have learned from SA managers that Vice-Chancellor Mitchell and Ms. Chavez have deliberately solicited negative comments from them regarding my

performance, e.g., "have you had any problems with Joan?" or "we are interested in knowing if you have found Joan to be uncooperative or intimidating?" instead of more neutral inquiries such as "how would you describe your interactions with Joan?"

7. These negative promptings and solicitations were conducted during, and just prior to, the same period of time when the fact-finder for the Administrative Review filed on 9-28-88 was interviewing the same SA managers. Since the factfinding process is designed to be an objective one, there can be no doubt that Vice-Chancellor Mitchell and Ms. Chavez's leading questions interfered with the fairness and objectivity of the fact-finding process by influencing SA managers to respond in a predetermined manner. Such a deliberate frustrating of the

fact-finding process is an intolerable violation of due process and fair procedure.

8. Vice-Chancellor Mitchell's sudden and unexpected transfer of me to Ms. Chavez, who was my peer and not my superior, after I had received a positive evaluation from him raises the question of whether the transfer was made to facilitate my subsequent termination.

After my transfer to Ms. Chavez, I was isolated, and, unlike other SA staff, was cut off from the kinds of sharing, support and collegiality which staff generally experience through committee participation. I was prevented from participating in informal, and formal meetings and was denied the intellectual interchange that is the "currency" of a research institution. This fact is

supported by Ms. Chavez's constant scrutiny of my appointment book and any time I spent away from my desk, including trips to the ladies room. I believe that these actions were part of a deliberate plan to isolate me and "build a case" for negative performance. By confining my interactions within Student Affairs, Vice-Chancellor Mitchell and Ms. Chavez essentially controlled the nature of the comments that could be made about my performance, since all SA managers report directive and indirectly to Vice-Chancellor Mitchell.

9. There are a number of incidents and inconsistencies in the events of the last four months that support the foregoing contention.

I was given program evaluation and needs assessment as "priority

assignments", two areas about which SA managers had in the past demonstrated sensitivity, suspicion and resistance. In fact, both Vice-Chancellor Mitchell and Ms. Chavez admit that managers had resisted reporting on their work in these two areas for the past two years. Ms. Chavez and Vice-Chancellor Mitchell gave out inconsistent information to me and then to SA managers regarding the purpose and use of the information requested as well as my role vis-a-vis SA managers in implementing these requests. Because of this inconsistency, there was continuing resistance and apprehension on the part of SA managers. In my meetings with them, they told me that they were concerned that the collection of program evaluation and needs assessment data was really a strategy designed to rationalize

reductions in their budgets and staff. They cited as an example the Verano Survey I was assigned to develop and the fact that student response to this survey resulted in a reduction in the Verano Housing Community Development Services Budget.

A similar situation existed with the Quality of Life Survey which I was assigned to develop along with representatives from Academic Affairs. The student responses to that survey identified several SA services as unhelpful and in need of improvement. Another example was the assignment from Vice-Chancellor Mitchell to develop a community-based initiative to address Slack parent education as a means of improving student preparation for the University of California. The initial

meetings for this effort, the Linkages Parent Education Workshops conducted jointly with the Association for the Advancement of Science were highly successful; however, they were viewed with suspicion by the UCI Student Affirmative Office, which wondered why Student Affairs and Joan Coleman were conducting outreach activities. These concerns were expressed by the Vice-Chancellor for Student -Affirmative Action, Manuel Gomez, in the Spring of 1988.

The critical point here is that I have been given extremely controversial assignments in Student Affairs over a considerable period of time. Since my transfer to Student Affairs in 1984, 1 have been assigned to many tasks that involved assessment, evaluation and accountability or other data collection

that predictably was viewed with apprehension, resistance and suspicion by the managers who were involved. It was the tasks. I was assigned that were intimidating and threatening , not me as an individual. Clearly, these tasks, of themselves generated resistance, avoidance and concern regarding their underlying intent.

Vice-Chancellor Mitchell and Ms. Chavez were well aware of the controversial nature of my assignments and the kind of reaction SA managers were likely to have toward me as the instrument for implementing the above-mentioned tasks. I was isolated and placed in a situation which was intended to enable them to present me as "argumentative, uncooperative and intimidating."

The fact that Vice-Chancellor

Mitchell and Ms. Chavez refused to respond to my request to discuss the purpose and use of the program evaluation survey data before distributing it to managers supports my contention that they intentionally wanted to generate confusion. Another incident supporting this contention is their cancellation of Robert Fullilove's presentation on Program Evaluation, once they had initiated procedures to terminate me. Arranging for Robert Fullilove to speak at the SA managers meeting on 12-6-88 as a resource person was one of my duties in my revised description, which indicates the importance of this task as viewed by Ms. Chavez and Vice-Chancellor Mitchell. I had arranged for a letter of invitation along with an airline ticket to be sent to Mr. Fullilove. The sudden cancellation of

this "important" presentation suggests that Vice-Chancellor and Ms. Chavez were never serious about carrying out the program evaluation assignment and that it was merely a strategy to set me up in a problem situation to facilitate my termination.

10. The attached response to Ms. Chavez' Letter of Intent to Terminate presents my response to the numerous allegations therein. In my response I asked Ms. Chavez to respond with correct information to those items in her Letter of Intent to Terminate which she admits were incorrect and/or did not provide sufficient information to enable me to respond to them. She has refused to do this.

In addition, the Letter of Intent to Terminate is replete with vague and

unsubstantiated allegations. It makes broadbrush allegations without citing specifics, references "continuing patterns" of conduct without identifying specific events, and is filled with various characterizations which are highly questionable. Many of the problems I have already discussed in my Response to Notice of Intent to Terminate. What follows are a few additional selected comments which I think are important for understanding the truly improper character and substance of the Notice of Intent to Terminate.

(a) Items 2 and 3 raised by Ms. Chavez are not grounds for termination. For her to claim that my assumptions were "erroneous" implies that she is competent to speak for Vice-Chancellor Mitchell and Chancellor Peltason. She is not. I believe it is her assumptions which are

erroneous and mine which are correct. In any event, surely I had every right in the world to seek clarification regarding my position at UCI. After all, it was my future that was at stake -- not Ms. Chavez's -- and if I believed that certain assurances were made to me, it was within my right as an employee to seek clarification of those assurances.

(b) Items 4 and 5 of the Notice of Intent to Terminate again point up the dictatorial attitude of Ms. Chavez. There is no policy at the University which prevents me from seeking clarification regarding my job status and it is totally improper for Ms. Chavez, or anyone else, to determine that it was "inappropriate" for me to seek a clarification of my position.

(c) Item no. 6 of the Notice of

Intent to Terminate borders upon the unbelievable. If I understand it correctly, Ms. Chavez is stating that one of the grounds for terminating me was that I had the effrontery to seek clarification regarding the manner in which to conduct a certain assigned task. As I have pointed out in my Response, she is wrong on this point, but even if she were right it seems to me that an employee should be commended for seeking clarification, rather than blindly going ahead without understanding the task. Indeed, the final irony is that Ms. Chavez even admits this fact in the Notice of Intent to Terminate when she states on page one that a MAP member's responsibilities include ". . . understanding the assigned tasks . . . and . . . asking for appropriate information and feedback regarding job

duties and performance."

(d) Item No. 8 of the Notice of intent to Terminate affords a revealing glimpse into 143. Chavez's management style. It is also an excellent example of how she mischaracterizes various events and behaviors throughout the Notice of Intent to Terminate. She says I "challenged" her and that this behavior indicated a "continuing pattern of failure to appropriately acknowledge Chavez as her supervisor." I would characterize the event very differently. I did not "challenge" her; I exercised a legal right to receive correct information. What she has done is deliberately retaliate against me for exercising a legal right.

(e) Items 11 and 12 of the Notice of Intent to Terminate are nothing more than an attempt to manufacture an

issue. it was perfectly proper for me to copy Vice-Chancellor Mitchell, and this is simply not an "issue" of any import at all. Certainly, it does not constitute a ground for terminating my employment.

(f) Item No. 20 of the Notice of intent to Terminate, along with the other entries relating to the University Ombudsman, again indicates the attempt to manufacture an issue. My involvement with the University Ombudsman had nothing whatever to do with. Ms. Chavez or with the Office of Student Affairs. To put the matter bluntly: It was none of her business and certainly it had nothing to do with my performance in student affairs and therefore was not a grounds for terminating my employment.

(g) Item No. 25 of the Notice of Intent to Terminate is another example

of mischaracterization by Ms. Chavez. I asked that I be canvassed regarding available meeting times. Ms. Chavez has interpreted that request to be "argumentative and confrontational ." In fact, it was nothing more than an effort to get information.

(h) Item No. 26 of the Notice of Intent to Terminate borders upon the bizarre. I did not "enter misinformation" (whatever that means). In any event, what I enter on my calendar is my own business and certainly is not grounds for terminating my employment.

11. Vice-Chancellor Mitchell has refused to consider the factual information I provided in my response to Ms. Chavez' Letter of Intent to Terminate. This further establishes that they are simply interested in terminating

me and not in affording me fair procedure and due consideration.

In his memo of 12-7-88 regarding termination of my employment, Vice-Chancellor Mitchell states that in my response to Ms. Chavez' Letter of Intent to Terminate, I have not provided any new information which could serve as a basis for changing the decision to terminate employment. This statement is preposterous and is itself evidence that the decision to terminate was never intended to be based on any fair, objective, factual assessment of my performance and progress in assigned responsibilities but on some subjective predetermined bias.

12. Vice-Chancellor Mitchell and Ms. Chavez have demonstrated a clear pattern of bias and malicious intent both in their

decision to terminate me and in their actions leading up to their decision. This bias and malicious intent has made it impossible for me to receive a fair review of my performance or of my response to Ms. Chavez' Letter of intent to Terminate. The fact that they are themselves the subject of an Administrative Review which I filed on 9-28-88 disqualifies them from fair and unbiased assessment of my performance.

13. The manner in which my termination was handled indicates vindictiveness on the part of Ms. Chavez and Vice-Chancellor Mitchell. At 4:00 p.m. on 12-7-88 they appeared in the doorway of my office and handed me a memo stating that I was terminated as of 5:00 p.m. on that date. They refused to discuss the matter with me and walked

away.

14. UCI is an Affirmative Action Employer. Its Affirmative Action statement and the MAP manual state that it does not discriminate in any of its policies, procedures, or practices on the basis of sex, race, color, national origin or religion.

Vice-Chancellor Mitchell at the time of my termination (and also four to five months prior to that date) was aware that there were at least two departments within the University that had expressed an interest in, or requested my transfer to, their unit. The fact that he did not actively pursue these alternatives, or act in line with MAP Policy 85 by asking the Chancellor to pursue these alternatives, is an indication of his failure to act affirmatively to work to retain me as a

member of an underrepresented minority. His, and the University's, failure to pursue the above alternatives constitutes discrimination. In the past UCI has acted to retain a number of white females for whom there were no specific positions or job descriptions. For example, in at least three instances, involving Barbara Bertin, Audrey Devore, and Judy Shoemaker, the University "carried" these individuals for periods ranging from six months to one and a half years until they could locate or develop "real" jobs for them. The University's failure to pursue those options for me evidences discrimination based on race.

15. UCI has evidenced a pattern of bypassing or limiting opportunities for assertive Black staff. There have been several public testimonies to this fact in

recent weeks. Repeatedly, the University makes life at UCI so inhospitable or unrewarding for such individuals that they eventually leave. The fact that in the-last fifteen months fourteen Slack faculty and staff have left UCI supports this point. Those individuals such as myself who assert their right to equal treatment at this publicly-supported institution experience isolation and/or retaliation.

What is also important here is the University's differential treatment of assertive whites versus assertive Blacks. Examples: Although Dr. William Parker and Otto Reyer are well known for their aggressiveness, such that their "task versus people orientation" is often characterized as abrasive or intimidating, they get the job done. Their personality and style are accepted because of their

skill and ability- However, this has not been the case with minorities such as Rick Turner and myself whose assertiveness has been viewed as a liability. These University attitudes and practices constitute differential treatment and represent the University's inability to tolerate ethnic and cultural diversity in the style and personality of minorities. Nowhere is this more evident than in Ms. Chavez' Notice of Intent to Terminate. The very characterizations of behavior she labels me with ("aggressive, "uncooperative," argumentative," "demanding," etc.) reflect a differential and discriminatory treatment of me.

November 23, 1988

JOAN COLEMAN

RESEARCH AND PLANNING ANALYST

Re: Written Letter of Warning

Over the past several months we have discussed problems with your being uncooperative, argumentative, demanding and at times intimidating. My concerns were also communicated tb you in my memos of October 3, 1988 and November 7, 1988 (attached).

This continued inappropriate behavior culminated in an act of insubordination that occurred on November 19, 1988. You came to my office and presented me with a memo to managers and Mr. Fullilove regarding his December 6, 1988 presentation that I asked you to prepare and distribute. Attached to the memos was

an approval form you had prepared, and you asked me to sign the form. When I told you that I was not going to sign the form, you said you would not send the memo without my signature on the form. I then asked you to send the memo, and you refused. I told you I was not asking you to send it, I was ordering you to do so; and if you did not send the memo, it would be considered insubordination. You proceeded to the door and while opening it you stated that you would not send the memo and that you did not consider your response an insubordinate act.

The behavior exemplified by this incident has resulted in ineffective relationships with colleagues, support staff, and me. It has been detrimental to the accomplishment of Student Affairs goals and objectives because of the inordinate

amount of time that is required to deal with its effects. It is expected that you will make the necessary behavioral changes in order to establish supportive, cooperative, responsive, and positive working relationships. If you do not, action up to and including dismissal will be taken.

Any further act of insubordination will not be tolerated and will result in your dismissal.

/s/

Bernadette M. Chavez
Executive Assistant and
Director of Resource
Planning

cc: Horace Mitchell
Lloyd Vierra

ATTACHMENT

Notice of Intent to Terminate

The following chronology of documented correspondence is illustrative of the problems of performance and behavior that have resulted in the decision to issue the Notice of Intent to Terminate to Joan Coleman (Ms. Coleman already has copies of the referenced correspondence):

1) 07/13/88 Coleman refused to meet with Mitchell and Chavez to discuss the transfer in her reporting relationship. This established the pattern of Coleman's refusal to attempt to work effectively with Chavez as her supervisor .

2) 07/19/88 In an attempt to clarify erroneous assumptions made by Ms. Coleman, Vice Chancellor Mitchell and Chancellor Peltason met with Coleman per her request. Chancellor Peltason clarified to Coleman

that he did not promise her a fellowship position in the Chancellor's office.

3) 07/29/88 In a memo addressed to Mitchell, Coleman continued to assert that the Chancellor's Office had promised her a fellowship. This is indicative of an argumentative attitude and an unwillingness to acknowledge that she might have been in error.

4) 08/18/88 Memo from Chavez to Coleman reiterated need to focus upon job description and not commit herself or clerical staff to matters not related to her new duties.

5) 08/31/88 Memo from Chavez to Coleman informed Coleman that it was inappropriate to use clerical staff to continue pursuing matters that were considered resolved. Chavez referred Coleman to the appropriate MAP process.

6) 09/02/88 Coleman requested from Chavez additional clarification regarding the manner in which to proceed with her task of evaluating program evaluation methodologies.

7) 09/22/88 The UCI Ombudsman raised issues about the confrontive manner in which Coleman approached him on 09/16/88 and the threats which she made at that time.

8) 09/27/88 Coleman challenged Chavez based upon her own erroneous understanding of personnel policies and inappropriately copied several UCI administrators. This is indicative of a continuing pattern of failure to appropriately acknowledge Chavez as her supervisor.

9) 10/03/88 Chavez informed Coleman of her concern about Coleman's demanding, uncooperative, and argumentative behavior,

and informed her that it was unprofessional and unacceptable for her to copy individuals who were not involved in the issues being addressed.

10) Coleman responded to Ombudsman in a manner that 10) 10/03/88 was not consistent with the need for her to maintain positive interpersonal relationships with staff.

11) 10/05/88 Coleman demonstrates an inability to understand an assignment and to prioritize her own work and by copying Mitchell again demonstrated a pattern of failure to appropriately acknowledge Chavez as her supervisor.

12) 10/05/88 Chavez informed Coleman that it was not necessary to copy Mitchell in correspondence pertaining to her work.

13) 10/06/88 Chavez informed Coleman that it was necessary to copy Chavez on all

correspondence related to her projects. Subsequently (11/19/88), Coleman confuses this directive as Chavez' wanting to approve correspondence before it is sent.

14) 10/12/88 Coleman refused to respond to Chavez' request for information regarding Coleman's interaction with the Ombudsman. Chavez counseled Coleman regarding the inappropriate use of office stationary.

15) 10/13/88 Coleman continues to be argumentative and uncooperative in communicating with Chavez regarding their working relationship, and continues to copy others.

16) 10/17/88 Coleman continues to be argumentative and uncooperative in communicating with chavez regarding their working relationship. She continues to put the wrong dates on correspondence.

17) 10/31/88 Coleman's inadequate response to Chavez request to revise program evaluation survey resulted in the information not being forwarded to managers.

18) 11/3/88, 11/15/88 Following a discussion with Student Affairs managers, Coleman was requested to provide a draft of correspondence clarifying objectives for pro evaluation. Her draft contained major errors which indicated her failure to understand the substance of the meeting at which she was present. It became necessary for Chavez to complete an initial draft and work with Coleman through several drafts before the package was finalized, delaying managers' receipt of the information in a timely fashion.

19) 11/07/88 Chavez again informs

Coleman of her continued argumentative, uncooperative and demanding communications (10/13/88, 10/14/88) and the negative impact it has an their working relationship. This is demonstrative of the need for Chavez to respond to correspondence from Coleman which contains erroneous information.

20) 11/08/88 Chavez informed Coleman that she did not appreciate her uncooperative behavior. in failing to respond to Chavez' questions which were in response to a request made by the Ombudsman.

21) 11/08/88 Manager responds to Coleman's misinformation (10/25/88) regarding the availability of confidential student data. This is demonstrative of written correspondence that is often unclear and confusing resulting in misinformation and wasted effort on the

part of staff.

22) 11/10/88 A second manager responds to confusing correspondence from Coleman regarding needs assessment.

23) 11/11/88 A third manager responds to confusing correspondence from Coleman regarding needs assessment.

24) 11/15/88 Coleman demonstrated uncooperative behavior by having her back turned to Chavez throughout the time Chavez was inquiring about details related to the program evaluation project.

25) 11/15/88 Coleman was argumentative and confrontational in memo to Chavez regarding a MA-P grade level review meeting.

26) 11/17/88 Chavez asked Coleman to explain why she entered misinformation on the calendar regarding an 11/16/88 meeting with Chavez.

27) 11/18/88 Coleman demonstrates inflexibility in addressing the nature of her responsibilities and her specific assignments and continues to demonstrate a confrontive attitude. This is also demonstrative of the inordinate amount of time that is spent clarifying general assignments.

28) 11/19/88 Coleman asked Chavez to sign an approval form which Coleman had developed before Coleman would send correspondence which she had previously (11/15/88) been instructed to send. Chavez indicated that her signature was not necessary since Coleman was expected to carry out the task independently. Coleman refused to follow instructions. Chavoc informed Coleman that if she did not follow Chavez' instructions that she would be considered insubordinate.

Coleman refused to follow Chavez, instructions.

29) 11/23/88 Coleman was argumentative, defensive and confrontive in responding to an inquiry by Chavez' regarding misinformation entered in Coleman's calendar. This is an example of dishonesty relating to a distortion of facts.

30) 11/23/88 Chavez gave Coleman a written letter of warning resulting from her insubordinate act of 11/19/88.

IRVINE: VICE CHANCELLOR-STUDENT AFFAIRS

December 2, 1988

JOAN COLEMAN

RESEARCH AND PLANNING ANALYST

Re: Notice of Intent to Terminate

This is to inform you of my intent to terminate your appointment because it is my judgement that you do not possess the ability to execute your responsibilities in a manner that is consistent with our needs for an individual in your role. In addition, your conduct has resulted in a situation in which we do not perceive you to be the helpful, facilitative person that we must have in this critical role which must be responsive to divisional priorities. Such conduct has contributed to the deterioration of morale among staff within the office and the division. As a consequence of your act of insubordination

an November 19, 1988, I issued you a formal letter of warning.

You have not demonstrated an ability to fully comprehend the nature of your role within the UC Management and Professional Program and the Student Affairs Management Advisory Group. Your performance has been such that I spend an inordinate amount of time clarifying general assignments and counseling you about appropriate professional behavior. Your written correspondence is often unclear and confusing, resulting in misinformation and wasted effort on the part of staff. On several occasions, it has been necessary for you to re-issue some of your correspondence because of errors and omissions. You consistently misdate correspondence resulting in confusion about the chronology of events. You

continue to request a level of specificity and documentation about your assignments and interactions which is not consistent with our expectations of an individual with your level of responsibility. When greater specificity is provided, you argue about minor details and complicate our discussions rather than demonstrating a willingness to proactively approach your assigned tasks. This demonstrates an inability to be adaptable and file in carrying out your assignments.

According to the MAP Performance Appraisal Guidelines, a MAP member's responsibilities include: understanding the assigned tasks, knowing the resources available to accomplish the tasks, knowing the factors that will be considered in evaluating their work, making the effort to understand how his/her assigned tasks

are valued and fit into group and University goals, and, if necessary, asking for appropriate information and feedback regarding job duties and performance.

From the very beginning of our working relationship, you began a pattern of refusing to attempt to work effectively with me as your supervisor. Your conduct is not characteristic of good supervisor/ member communications as described in the MAP Performance Appraisal Guidelines. Instead, your behavior is argumentative, resistant to supervision, demanding, and confrontational. While I have verbally, in writing, and in my interpersonal interactions with you demonstrated that I am striving to establish a positive and cooperative professional relationship that is based upon mutual professional trust,

your responses to me have not been reciprocal in nature or demonstrative of efforts to facilitate the establishment of a relationship that forms the foundation for getting the job done expeditiously and efficiently. Furthermore, I consider your rewriting and reediting of correspondence to be manipulative, dishonest and a distortion of facts. You often continue to act on your erroneous assumptions even when contrary information is clearly provided to you. Your refusal to acknowledge that perhaps your assumptions could be wrong is indicative of a lack of ability on your part to reassess the validity of your assumptions.

You have not demonstrated, since July 18, 1988, that you can perform your duties in a fashion consistent with my expectations and the needs and priorities of the

division. Illustrative examples which form the basis for my conclusions are contained in the attachment.

MAP Policy 85 specifies that a member has five calendar days in which to respond to a Notice of Intent to Terminate. Therefore, you have the right to respond to this notice either orally or in writing no later than 12:00 noon on Wednesday, December 7, 1988.

/s/

Bernadette M. Chavez
Executive Assistant and Director of Resource Planning

Attachment
cc: Vice Chancellor Mitchell
Assistant Vice Chancellor Espinoza
Barbara Davia, Personnel
Lloyd Vierra, Personnel

December 6, 1988

BERNADETTE CHAVEZ

EXECUTIVE ASSISTANT AND DIRECTOR OF RESOURCES

Re: Response to Notice of Intent to Terminate

The following is my response to the chronology of documented correspondence which you allege to be illustrative of the problems of performance and behavior that, you identify as the basis for the Notice of Termination you submitted to me on 12-2-88.

1. My records and Vice Chancellor Mitchell's colander show that no meeting was scheduled on 7-13-88. I asked Vice Chancellor Mitchell if we could postpone the discussion of the transfer in reporting relationship until we had the opportunity to meat with the Chancellor to

obtain clarification on the future availability of the three job options Vice Chancellor Mitchell and I had discussed He has a memo to this effect. Vice Chancellor Mitchell agreed to this, and the meeting was rescheduled for 7-28-88 after the meeting with Chancellor Peltason which took place on 7-19-88.

2. and 3. I have never stated that "the Chancellor promised me a fellowship". Those are Vice Chancellor Mitchell's words. I have indicated that in discussions with the Chancellor and Ruth Ann abdouch, they indicated that they were interested in providing me with "other professional development opportunities which would mirror or be similar to the ACE Fellowship activities". (See my memo of July 29, 1988 to Vice Chancellor Mitchell written after the meeting with

the Chancellor on 7-19-88.) Since both the above possibility and a possible position in the Office of Education were suggested to me by the Chancellor's Office, I felt it was important to obtain clarification there. After receiving clarification from the Chancellor regarding the statements made by him and Ruth Ann Abdouch in the 12/4/87 meeting I thanked him for taking the time to meet with me and asked to be excused from the meeting.

These items are the subject of an Administrative Review filed 9-28-88, and have been submitted to a factfinder for adjudication.

It appears that the Chancellor's Office was, in fact, considering bringing on someone for a one year assignment. When Vice Chancellor Mitchell refused to indicate his support for me in one of the

job possibilities discussed above, I note that Leslie Millerd of the Women's Center was asked to work with the Chancellor office on a one year assignment to address minority concerns.

4. I find no memoranda relating to this item. When on 12-6-88 I asked your secretary for a copy of the memo you cite, she said that she was not sure but that when she checked with you, you said that you "thought the chronological listing got messed up". She then gave me a copy of a memo dated 8-15-88 regarding a "Luncheon Meeting: Tuesday August 9, 1988". and said that she thought that this might be the memo to which item number 4 referred.

I believe that a Notice of Intent to Terminate is a serious piece of correspondence and should be factual and precise; therefore, I am requesting that

you provide me with the specific documentation for this item indicating in writing any correction that is necessary.

5. This item is currently the subject of Administrative Review and has been submitted to a factfinder for adjudication.

6. The request in question was made when managers informed me that the process that you had asked them to follow in the Evaluation Survey form you prepared was in conflict with the instructions you and Vice Chancellor Mitchell had given them earlier (in meetings where I was not present). You will note that in an effort to be of assistance I offered options for Your consideration. I clearly was not asking you how to do my Job (program evaluation). I was informing you that managers were confused by your

inconsistent instructions and was making some recommendations as to how you might proceed to address the situation. The fact that you did not understand this is an example of the kind of fragmented perception on your part that has resulted in communications problems in our working relationship.

7. Mr. Wilson's statements are hearsay. He has no evidence to support his allegations. I have discussed this point with you several times. The fact that you continue to bring it up in our supervisory conferences is evidence of your continued harassment of me. Also, this point is the subject of Administrative Review and has bean submitted to a factfinder for adjudication.

8. Every UCI employee has the right to receive correct information regarding

Personnel policies and therefore, to be informed of the sections of MAPS or other personnel policy on which an action is based. Asking for clarification of personnel policy is not an indication of failure to acknowledge you as my supervisor".

It appears that you believe that being a supervisor makes you infallible or that you do not have to abide by University personnel policy. Your continuing disregard for personnel policy is supported by the fact that your secretary has filed a grievance against you for acting in violation of personnel policy. As of this date you still have not given me with copies of personnel policy related to my request; consequently, there is no evidence to support your claim of "my erroneous understanding".

9. I deny that I have been demanding, uncooperative, and argumentative in our working relationship. in my conversations and communications I have used the standard language, i.e. " I would like to ask that ", "I request that", "I respectively ask that" or "I would appreciate your providing me with", that is found in most university memoranda.

I have had some 15 years of administrative experience in higher education. I attempt to operate with a high degree of expertise and professionalism at all times. Also, I have sought to obtain the clear consistent information that I need to carry out my duties effectively. I find that frequently you are inconsistent in your instructions or you simply do not understand what I am saying or you misunderstand or focus on some minute part

of the total picture I am trying to convey. I recognize that this may be due to the considerable difference in our background and experience in the areas in which I have been assigned to work. Also, it has been my experience that you do not view support and facilitation as part of your supervisory responsibilities.

I have cooperated with you in completing assignments and have assisted you in completing tasks not in my job description such as the SAA evaluation.

There is no evidence that I have been uncooperative, argumentative or demanding with Student Affairs managers. My relationships with the SA managers with whom I have had the opportunity to work have been cooperative, flexible and supportive. I have provided technical assistance where needed and/or requested

and, when doing so, I have been careful to respect managers concerns and priorities. I have also taken the initiative to provide managers with resource information and suggestions in relation to their interests and responsibilities. Where managers have written to express concerns or request clarification about program evaluation or needs assessment, (the three instances you cite), I have met with them personally to resolve matters to their satisfaction. (See memoranda to Norma Grundy dated 11-18-88 and to Sally Peterson dated 1-23-88.) Also, I met with Karen Bocard on 12-1-88 and resolved her concerns. She was not aware of my new responsibilities as they related to her unit.

Regarding the additional allegation you make in this item I think that it is

important to recognize that as an employee I have a right to copy persons whose responsibilities relate to the contents of my correspondence, or those persons whom I would like to be informed of the matter in question. After all, this is a University, not a dictatorship.

10. The matter to which you refer has nothing to do with my responsibilities in Student Affairs. First of all, Mr. Wilson is not a member of Student Affairs. Secondly, I am wandering why a memo I wrote in response to Mr. Wilson's allegations are matter for you review since it did not relate to you, Student Affairs or my assigned duties. Thirdly, the matter in question relates to allegations. If there is no evidence to support Mr. Wilson's claim, then you have no basis on which to claim that I have not

been positive in my relations with him.

Since Mr. Wilson initiated the correspondence, I had a right and obligation to present the facts as I saw them. I find it interesting that you as my supervisor, continue to focus on this item; I wonder if Mr. Wilson's supervisor has given such a non-issue so much attention.

Finally, I would like to point that I have positive working relationships with the regular Student Affairs staff in our office. Your presentation of this matter is misleading and is another example of harassment.

11. and 12. In reviewing my Chron file, I find no correspondence dated 10-5-88 relating to this item, therefore, it is difficult to respond to your charge. Please provide me with documentation for

the correspondence to which you refer in your item number 11 in your Notice of Intent to Terminate.

There is a memorandum dated 10-4-88 which relates to a budget document you discussed with me in one of our supervisory conferences. At that time you said that you wanted me to review it and make recommendations, but then, you took it back before the end of the meeting. Since you have recently prioritized my assignments and assigned due dates I felt that it was important to determine if you still wanted me to pursue the analysis and where it stood in those priorities you have established for the duties in my current lob description. After I made this request, you did in fact return the document to me and assign a priority to the analysis of the document. I think

that frequently you misunderstand my inquiries. Since you gave me the assignment only you know by which date you need the information. Surely, as a supervisor, you must realize that establishing the due dates for my assignments are not my responsibility, it is yours. Once you have given me these dates I have prioritized my daily work to complete assigned tasks within the deadlines.

I have copied Vice Chancellor Mitchell in correspondence which relates to information that I have discussed with him earlier or about which I think that it is important that he be current. For example, I copied him on the memos, letters and press releases that came in after the Linkages meeting in August, since the Since the Black Administrators

group has expressed an interest in this program and often asks questions about the program. He was copied on my Progress Report dated 9-30-88 because I believed that it was important that he have first have knowledge about my performance since he had told a number of administrators and faculty members incorrectly that I did not want to do or was not doing my present job.

Neither of the matters you cite in number 11. and 12. support your claim that I am unable to understand an assignment. In this instance you failed to make a complete assignment, so it was necessary to ask for additional information.

13. You are in error in your statement in this item. I did not confuse your directive to copy you on all correspondence. After the memos to SA

managers regarding services available from Analytical Studies (dated 10-25-88) was sent out and you thought initially that you had not approved it, you told me that you wanted to review all my correspondence before it was distributed. (Later you recalled that you had approved distribution of the Analytical Studies memo.)

14. You asked me to share my confidential response to a confidential inquiry from the Chancellors Executive Assistant. I said that I did not feel comfortable in doing this given the confidential nature of the correspondence. I asked that you make the request to Ms. Abdouch directly. You informed me that you did this. This was not an instance of uncooperative behavior. In my note to regarding this matter, I state clearly that "It was not

my intent to be uncooperative," but to protect confidentiality.

This confidential correspondence did not relate to you, my job responsibilities, nor the area of Student Affairs.

15. I deny that I was being uncooperative and tentative in the memo cited. The memorandum to which you refer discusses my efforts to list a positive working relationship with you and points out some factual examples of the kind of interaction on your part that generate mistrust in our working relationship (i. e. your continued harassment regarding the Ron Wilson memo which was a non-issue in relation to the priority of my job responsibilities, your deliberate withholding of your concerns in a supervisory conference where we could have discussed and resolved matters, and your

sending me a memo at the end of the day bringing up additional concerns about this same matter.) It is interesting that when a supervisee expresses such serious concerns, you as a supervisor do not feel any responsibility to address them. This is another example of your lack of understanding of the role of a supervisor in communicating support and trust in our working relationship. You say that you want a positive relationship, but your actions contradict this.

16. I find no correspondence relating to the memo you cite; please provide me with documentation regarding this item.

I wish to point out that errors in typing do occur from time to time. I cite examples. Your Letter of Written Warning dated 11-23-88, claims that I was insubordinate in meeting on 11-19-88,

a Saturday, That date is incorrect. Our meeting occurred on 11-18-88. Also, you give incorrect dates in items number 1 and 4 of your Notice of Intent to Terminate.

17. In line with your request, I provided you with a revised shorter version of your original evaluation survey based on the feedback that I received from managers and based on my expertise in this area. I pointed out that since many of the managers already had submitted reports based on the first survey form, that any revision of that form "mid-stream" should request essentially the same information so that we could report on our efforts across units with uniformity and consistency. To date you have not indicated what was "inadequate" about the revised form which was designed to obtain essentially the same information as the

initial form and the information you requested. You decided, finally, to discuss program evaluation at a SAMAG meeting on 11-1-88 and to delay sanding a revised form until after the meeting.

18. At your request I coordinated and distributed the Program Evaluation survey you developed on 10-6-88. When managers expressed concern about the form, you decided to send out additional material. On 11-2-88 when we discussed possible approaches, you specifically asked me to write down a statement similar to the philosophy that I had just expressed verbally. You said you wanted it as an insert to be included with other materials. When I gave you a draft statement you said that you did not want that approach. A review of the draft statement I prepared does not indicate "a

lack of understanding of Student Affairs or the substance of the SAMAG meeting". It does indicate that I recommended a historical paragraph introducing the request we were making. This is a common approach in facilitating understanding of program evaluation. The one page statement concludes with a statement which is clear in its relationship to what we were asking managers to do. When you indicated that you had changed your mind about what you had asked me to do I concluded that this was yet another instance in which you sought, deliberately, to create another instance of something that was not "correct".

You are incorrect in stating that you worked with me through several drafts. I provided you with one draft and one final copy of the technical insert on program

evaluation well before your package of materials was ready to be distributed. This package was supplementary information. It was not expected by managers, many of who had submitted their reports already. You established no deadline for distribution of this material.

19. In our meeting on 11-9-88 you indicated that this memo was your response to my memos dated 10-13-88 and 10-14-83 expressing concern about the mistrust you generate when you manipulate information and do not provide simple and direct answers to concerns regarding policy and other issues. Again, you did not respond to my concerns but, instead defended your actions at length. This indicated to me that you were not interested in direct communication or in building trust in our

relationship. This is not evidence of my being uncooperative, etc. but another instance of your refusal to understand what I am asking and to respond in a helpful manner.

20. This item appears to be a repeat of the point you mention in item number 10 and 14. You appear to be using this non-issue over and over again to expand your list of complaints. This is clear harassment.

21. and 22. A review of the memo in question, Services Available Through the Office of Analytical Studies, dated 10-25-88 shows the following:

At no time do I state that I, personally, (or any one else for that matter) will be conducting research on recipients of counseling services, or merging data on this topic. Counseling was one of five

examples given where OAS could provide assistance to managers. I would like to point out that I checked with the Director of the Counseling Canter who felt that the statement was clear. The manager who expressed concern recognized in later discussion that perhaps she had not read the material closely, but had responded to what she thought might be an issue of confidentiality.

As I point out in my response above, I discussed this matter with the manager in question and resolved it to her satisfaction.

There is no information in this memo; it was cleared by the Director of Analytical Studies. Unless you can cite other evidence for your allegation, can only assume that this is another instance of "witch-hunting".

23. and 24. You seem not to realize that these are normal staff responses given the fact that you and Vice Chancellor Mitchell have failed to inform managers that I have been assigned to develop a needs assessment instrument and will be discussing it with them. If needs assessment is a high priority as you and Vice Chancellor Mitchell claim, why have my duties in this area not been so communicated to those managers which he supervises and with whom I will need to interact? That is his responsibility. The fact that I was able to resolve and clarify each of these concerns to managers satisfaction is evidence of my flexibility, and cooperation and skill.

24. You cite no specifics for this allegation; therefore, I am unable to respond to it. I do not recall any such

incident.

25. It is appropriate to ask that I be canvassed (as were others) regarding available meeting times so that I could attend a MAPS meeting which you were planning, especially since I was on a one year leave of absence when the program began and did not have the benefit of the orientation other MAPS staff had.

26. You went to my calendar, read a note I made to remind myself of something and then decided without discussing it with me, that what I wrote was misinformation! Misinformation for whom? I did not address any communication to anyone. Clearly, I can write whatever I find helpful in my calendar. This is another example of your excessive monitoring and harassment.

This item relates to a matter that is

under Administrative Review (harassment) and has been submitted to a factfinder for adjudication.

27. This was not a confrontation. As I state in my memo of this date I felt that you had placed me in a "no-win" situation and I was attempting to avoid situations like those you generally set up in an attempt to cite me for an infraction. Refer to my memo of 11-18-88.

This matter is the subject for Administrative Review and a request for review by a factfinder.

28. This data is incorrect as 11-19-88 is a Saturday. Please provide me with the correct date and documentation for this item so that I can respond appropriately. Also, refer to attached response to your Letter of Written Warning, filed as part of my Request for Administrative Review

filed 11-28-88.

This matter is the subject of Administrative Review and a request for review by a factfinder.

29. This item is a repetition of number 26 above. I did not discuss this matter with you on this date, so the behavior you allege could not have taken place. When you asked me about this matter I referred you to my memo responding to your inquiry. The secretary gave you an additional copy of the memo. See my response to item 26 above.

30. I deny that I was insubordinate.

This item is the subject of Administrative Review and a request for review by a fact finder for adjudication.

In summary, I would like to point out that prior to assuming my assigned duties under you, I worked under MAPS guidelines for 15

months and my performance was rated as more than satisfactory. In this capacity I clearly demonstrated my ability to take initiative, define priorities, communicate clearly and function with minimal supervision. Also, the fact that I have completed all the assigned tasks in my new job description within the designated timelines is evidence of my ability to function affectively at a MAPS level. These assignments as listed in my job description include:

Distribution of the initial program evaluation survey; due 10-31-88, completed 10-18-88.

Preparation and distribution of a summary of data and resources available through the Office of Analytical Studies; due 11-15-88 completed 10-25-88.

As requested, arrangements were made for

Robert Fullilove from UCB to conduct an program evaluation workshop on 12-6-88, the first available date.

Development of a system for identification and notification of managers of grant opportunities; revised due date; 11-4-88, completed 11-4-88.

Development of a draft of a Student Affairs Needs Assessment Instrument; due 12-1-88, completed 12-1-88.

With your approval, I began my assigned duties on 9-1-88. You did not give me the complete guidelines with timelines and a description of your expectations until 11-7-88. I find it surprising, therefore, that you are now, barely a month later, informing me of your intent to terminate me. I believe that I have communicated my interest in working effectively with you and in Student Affairs. I have also urged

you to consider the obstacles I have experienced since many of these relate to the lack of clarity among managers about my newly assigned duties, and are not under my control. It is my belief that you have not yet worked to address and resolve this issue which has created communications barrier in our working relationship and our understandings I believe, also, that you have ignored the positive working relationships I have established with managers and the assistance I have provided to them. As stated previously, I have already demonstrated that I have the ability and skills to do MAPS level work, and have been evaluated as "more than satisfactory" in doing so.

/s/
Joan E. Coleman
Research and Planning Analyst

EXHIBIT "16" APP-242

December 7, 1988

JOAN COLEMAN

RESEARCH & PLANNING ANALYST

Re: Termination of Appointment

After considering your written response to the December 2, 1988 Notice of Intent to Terminate, I have determined that you have not provided any new information which could serve as a basis for changing the decision to terminate your appointment. Therefore, your appointment is officially terminated as of 5:00 p.m. today for the reasons stated in the Notice of Intent to Terminate. You will receive 60 days pay in lieu of notice.

/s/

Horace Mitchell
Vice Chancellor - Student Affairs

EXHIBIT "16" APP-243

cc: Barbara Davia, Employee Relations
Bernadette Chavez, Executive
Assistant and Director of
Resource Planning
Carla Espinoza, Assistant Vice
Chancellor
Lloyd Vierra, Employee Relations

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

January 12, 1989

VIA MESSENGER

Chang-Lin Tien

Executive Vice-Chancellor

University of California, Irvine

509 Administration Building

Irvine, CA 92717

Re: Objection to Fact Finder's Report of Penny Sperling regarding Request for Administrative Review filed by Joan Coleman

Dear Vice-Chancellor Tien:

On September 28, 1988, Joan Coleman filed a Request for Administrative Review pursuant to MAP Policy 70. Subsequently, on December 20, 1988, Penny Sperling, Director of Ambulatory Care

Nursing/Clinical Services at UCI and the appointed Fact Finder in this case, rendered her Fact Finder's Report. The purpose of this letter is to state a number of specific objections to the Fact Finder's Report on behalf of Joan Coleman. The Fact Finder's Report is incomplete, evasive, and without substantiation. It does not fairly or fully confront the issues which have been raised in Joan Coleman's Request for Administrative Review nor does it reach findings of fact which are in the slightest supportable.

On page one of the Fact Finder's Report, Ms. Sperling states that one of her responsibilities is to identify and clearly state the issues of the Administrative Review. She then lists five such issues. The issues she identifies certainly are present in the

Administrative Review, but so are at least three others which are of considerable importance. First, Joan Coleman has alleged differential treatment of her vis-a-vis other individuals in the MAP Program. Second, she is clearly protesting in the Administrative Review the fact that her skills have been under-utilized ever since she was transferred from Academic Affairs to Student Affairs. Third, she raises as a major issue the fact that she has consistently been denied professional advancement opportunities.

With regard to the specific "FACTS" which commence on page three of the Fact Finder's Report, I have a number of specific objections.

The first fact, headed "Job Demotion," is an unbelievably anemic

discussion. It is obvious to anyone who has read the Administrative Review that Joan Coleman is alleging that she has, de facto, been demoted. In other words, because she has been assigned to work under a peer, not a superior, she has in effect been demoted. The discussion by Ms. Sperling simply does not confront that issue. All Ms. Sperling does is comment that a Personnel Action Request Form has not been filed. She also makes reference to an organization chart which does no more than put in a visual form precisely the demotion issue about which Joan Coleman is complaining. Nowhere does Ms. Sperling make any findings of fact with regard to the following sub-issues: (1) whether Ms. Coleman was transferred to Ms. Chavez in order to make it possible for Ms. Chavez to be promoted from a staff

to a line management position; (2) whether Personnel was correct in stating that it is unusual to assign a MAP Program staff person to be supervised by someone who is at the same MAP level; (3) whether Personnel was correct in informing Ms. Coleman that in order for one to become a Director one must have professional staff reporting to that person; and (4) whether the assignment to Ms. Chavez in fact put Ms. Coleman in the position of being supervised by someone with considerably less experience than she. Without confronting these various sub-issues and making appropriate findings of fact, there is simply no basis for Ms. Sperling's unfounded conclusion that "There is no job demotion or job promotion in effect."

The discussion of discrimination based on age is, for the most part,

simply off-base. Ms. Sperling takes up a considerable amount of space discussing whether or not Vice-Chancellor Mitchell told the truth when he stated that he did not know Joan Coleman's age until he saw the Request for Administrative Review. What discussion there is seems to indicate that Vice-Chancellor Mitchell did in fact know Joan ColemAn's age or, at least, should have known it. The only other discussion is with regard to the fact that there are twenty-three MAP employees in the late-forty to early-fifties range and that they have not reported any sense of being discriminated against. That is all very well, but of course it has nothing whatever to do with Joan Coleman's allegations that she has been discriminated against because of her age. Once again, Ms. Sperling does absolutely

nothing to make any relevant findings of fact upon which a conclusion could be based.

The discussion under the heading "Denial of Professional Development," which commences on page four of the Fact Finder's Report, is particularly objectionable. It displays a complete misunderstanding of the MAP Program, creates irrelevant parallels between MAP employees and University employees in the medical School, and concludes with findings of fact that are not based upon anything.

For example, the first paragraph of that discussion states that Or. Mitchell will do what he can to support the goals developed by the staff. Says who? Upon what is this conclusion based? The paragraph then goes on to discuss the

inordinate University support" that both Bernadette Chavez and Joan Coleman have received. "Inordinate" by whose standards? This paragraph concludes with a "finding of fact that such support and professional opportunity is far above that extended to the 8,000+ employees of UCI or to most other MAP employees." Who cares what the professional opportunities are for the other employees of UCI? That has nothing whatever to do with the issue of whether Joan Coleman has, or has not, been unfairly denied opportunities for professional advancement. Furthermore, what is this purported "finding of fact" based upon?

The next paragraph makes some generalized, unsubstantiated personal reflections upon what "university employees" seem to be doing in regard to

their private education. For some reason Ms. Sperling seems to take offense at the fact that University physicians and nurses must attend classes for renewal of licenses and pay for those classes themselves, whereas Bernadette Chavez and Joan Coleman (it is assumed) are being compensated in the manner. What on earth has this got to do with any finding of fact Ms. Sperling is supposed to be making and, further, what has this to do (assuming it is true) with the Request for Administrative Review?

The next paragraph under Section 3 states that it is not policy to hold the University responsible for an individual's professional development. Wrong. In fact, it is MAP Policy (and therefore University policy) to do precisely the opposite of what Ms. Sperling here

asserts. I direct your attention to MAP Policy 41, which in part reads as follows:

"A. PURPOSE AND NATURE OF DEVELOPMENT PROGRAMS.

Management Development Programs may be provided to enhance professional and managerial development, to increase administrative effectiveness-, to help members compete for advancement opportunities, to promote affirmative action objectives, and to enhance the overall quality of University management. Development opportunities may be provided through on-the-job training, institutes, workshops, and other programs. In addition, special leaves such as educational and professional development leave and personal leave may be provided to enable a Management and Professional (MAP) Program member to take advantage of

these opportunities."

It would help if Ms. Sperling at least began her Fact Finder's Review with a correct understanding of what is and is not appropriate University policy as it bears upon Ms. Coleman

The remainder of Section 3 regarding denial of professional development asserts a series of "findings of fact," not one of which is supported by any detail in the Fact Finder's Report.

The discussion under IV, headed "Emotional Harassment in the Attempt to Perform Responsibilities" is deplorable. I have absolutely no idea what the first paragraph under that section is attempting to communicate, why it is included in the Fact Finder's Report, or what possible relevance it has to anything in the Request for Administrative Review. The

second paragraph, which purports to be a "finding of fact," is nothing more than a conclusion without any supporting reference whatsoever. The same is true of the final paragraph under IV.

The discussion of discrimination based on third-party sexual discrimination is equally lacking. The paragraph which describes Dr. Mitchell's being "loved and respected by his managers and staff is nothing more than a vague,, very personal conclusion without any factual reference at all.

The discussion on page six of the Fact Finder's Report is nothing more than a wandering, disconnected series of personal observations (one assumes) which end with some irrelevant and totally unsubstantiated "finding of fact" that Joan Coleman "did not suffer because of

third-party sexual discrimination." How Ms. Sperling arrives at that conclusion is absolutely beyond me.

Much of this discussion essentially commends Joan Coleman for her excellent performance. She is referred to as "exemplary." Then what follows is a strange series of unfounded comments on the "interpersonal style" of Joan Coleman in which she is said to be detail-oriented and task-oriented. Somehow that seems to be perceived by the Fact Finder as negative. There then follows another series of strange comments about Joan's lack of diplomacy, political sensitivity, or "ability to hear the real issue and act accordingly." This discussion is so vague, amorphous, and subjective that one wonders what it is even doing in something that is posturing as a "Fact Finder's Report."

Most troubling is the fact that none of these vague comments is in any way substantiated by a reference to a single fact, a single event, or one shred of supporting factual evidence.

The purported Fact Finder's Report of Penny Sperling is little short of an atrocity. It is difficult to believe that a Person's professional future can be put in jeopardy by such a slipshod, incoherent, and unsubstantiated document as this. I urge you to give Joan Coleman a fair review because she has certainly not obtained it through a fact finder.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:kaw
cc: Edward M. Opton,, Jr.
University Counsel

UNIVERSITY OF CALIFORNIA, IRVINE

[LETTERHEAD]

January 20, 1989

Joan E. Coleman

4261 Margarita Street

Irvine, CA 92714

RE: Request for Administrative Review #C-MP-889-02, filed September 29, 1989

Dear Ms. Coleman:

I have considered the information you provided during our meeting on January 13, 1989, and have read the documents provided by you, Dr. Mitchell, and factfinder Sperling.

On the basis of this information, I find that the record does not support your allegations that you were denied development opportunities, demoted, and emotionally harassed because of age and

sexual discrimination (third party).

Sincerely,

/s/

Chang-Lin Tien
Executive Vice Chancellor

cc: Horace Mitchell
David B. Carroll

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

January 27, 1989

Barbara Davia, Manager
Labor/Employee Relations
University of California, Irvine
Irvine, California 92717

Re: Request for Further
Administrative Review
#C-MP-889-02 (Joan Coleman)

Dear Ms. Davia:

I am in receipt of your letter dated January 23, 1989, to which was attached a letter to Joan E. Coleman from Executive Vice-Chancellor Chang-Lien Tien, dated January 20, 1989. In your letter (which is addressed to Ms. Coleman) you state at paragraph 2 that if she decides to request further review, she is to submit her request in writing to your office by

January 30, 1989.

This will serve to inform you that I represent Ms. Coleman and she has authorized me to request on her behalf further administrative review of this matter. Please take such steps as are necessary to implement the review process.

With regard to the administrative review process, I want to state on record again that both Ms. Coleman and I strongly object to the University's designation of the persons who are conducting the "review." I wrote to you on November 3, 1988 and in that letter expressed concern that the administrative review process was being commenced by seeking a "review" from Dr. Horace Mitchell, who is clearly one of the central figures in Joan Coleman's dispute with UCI. I explained in that letter that I felt it was a violation of

fundamental due process for the University to have Dr. Mitchell "review" the merits of Ms. Coleman's administrative complaint against Bernadette Chavez, a complaint which necessarily included allegations against Dr. Mitchell on grounds of favoritism. I believe that designating Dr. Mitchell to be the first stop in the "review" process has tainted the entire process. It has certainly made it less than an objective, fair-minded evaluation of Ms. Coleman's complaint.

As for the second level of review by Executive Vice-Chancellor Tien, his letter of January 20, 1989 tells me nothing except that he has "considered" the information Joan Coleman gave him during a meeting one day and has read the documents provided by Joan Coleman, Dr. Mitchell, and factfinder, Penny Sperling. (The

deplorable shortcomings of Penny Sperling's purported "factfinder's report" I have already objected to in a letter of January 12, 1989 to Executive Vice-Chancellor Tien.)

What concerns me about Executive Vice-Chancellor's Tien's letter of January 23, 1989 is its obvious non-compliance with Management and Professional Program Policy 70. MAP Policy 70 specifically provides for the appointment of a factfinder and the generation of a report by the factfinder. Section C of MAP Policy 70 clearly contemplates that those findings of fact must serve as the basis for any subsequent review of the grievance case. Specifically, the Policy states:

> "Decisions at higher levels must be based on findings of fact. If a decision is based on facts

different from those found by the factfinder, those findings must be based on materials in the record."

Nowhere does Executive Vice-Chancellor Tien's letter of January 20, 1989 explain those findings of fact upon which his decision is based. The letter just alludes in a general manner to certain interviews and certain documents and makes a passing reference to "the record." That is not good enough. It is clear that MAP Policy 70 contemplates a reasoned, fact-based decision by the reviewing official and the grievant (in this case Joan Coleman) is entitled to know what findings of fact are serving as the basis for Executive Vice-Chancellor Tien's decision. If Executive Vice-Chancellor Tien has relied on facts

different from, or additional to, those found by Penny Sperling, we are entitled to know what they are, where they can be found in the record, and what portion of his decision is based upon those facts. I therefore demand on behalf of Joan Coleman that Executive Vice-Chancellor Tien provide in writing a statement of the findings of fact upon which his decision is based and, further, that this written analysis be sufficiently detailed that it will fully and faithfully explain how his decision is grounded in facts in the record.

With regard to Step 3 of the administrative review process, I strongly object if UCI intends to designate Chancellor Jack Peltason as the next reviewing official. It is already bad enough that stage one has involved Dr.

Mitchell as the reviewing official. To repeat this same kind of incestuous review at Step 3 would be in no one's best interests. It is obvious that one of the key issues in Joan Coleman's dispute with UCI is what promises were, or were not made, by Chancellor Peltason and his office with regard to a fellowship position for Ms. Coleman in the Chancellor's office and other such matters. (In this regard, I refer you to items 2 and 3 in the attachment to Bernadette Chavez I s Notice of Intent to Terminate Ms. Coleman's employment.) To put the matter simply: Chancellor Peltason is a key figure, as was Dr. Horace Mitchell, and it would be totally improper to have him "review" his own conduct as UCI has already required Dr. Mitchell to do. We insist that at Step 3 of the

review process the matter be reviewed by President Gardner and not by Chancellor Peltason.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:kaw

cc: Edward M. Opton, Jr.

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

February 9, 1989

DELIVERED VIA TELECOPIER

Edward M. Opton, Jr.
University Counsel
Office of the General Counsel
University of California
590 University Hall
Berkeley, CA 94720

Re: Grievances of Joan Coleman: Response to Your Letter of February 8, 1989

Dear Mr. Opton:

In regard to your letter of February 8, 1989, my response is very simple. First, your statement that "the campus is not aware that Chancellor Peltason or Executive Vice Chancellor Tien participated in the decisions under

review" is completely unsupportable. You know as well as I that one of the key issues in Joan Coleman's grievances are the representations that were made to her by Chancellor Peltason and his staff regarding providing her with other professional development opportunities that would mirror, or be similar to, the ACE Fellowship activities for which she had applied. Chancellor Peltason, therefore, was personally involved in one of the major issues in dispute and therefore cannot be expected to be an impartial reviewer. Likewise, Executive Vice Chancellor Tien has already purported to a "review" a previous administrative decision involving Joan Coleman and involving many of the issues which arose in Joan Coleman's first administrative review. Again, he cannot be considered an

impartial reviewer.

Second, whether MAP Policy 70 says anything about excluding the Executive Vice Chancellor or the Chancellor from participation in administrative reviews is not the issue. The issue is whether a review by either of these individuals is consistent with rudimentary precepts of due process. The principles enunciated in Applebaum v. Board of Directors (1980) 104 Cal.App.3d 648 are authority aplenty to require exclusion of the Chancellor and the Executive Vice Chancellor from any further review of Joan Coleman's matters. Impartiality of the adjudicators is a critical factor in determining whether there has been due process of law, as the Applebaum case states, and in Joan Coleman's instance it is unrealistic and impractical to believe that Chancellor

Peltason and Executive Vice Chancellor Tien can remain impartial in this matter.

Furthermore, both administrative reviews have already been tainted by the participation of Horace Mitchell at the first level of review. As the Applebaum case remarks, combining the investigatory, prosecutional and adjudicatory functions in one body violates the standard of fairness which is necessary to comport with due process of law. Dr. Mitchell was a participant in the events which are grieved by Joan Coleman; he clearly investigated those facts through his discussions (and other activities) with Bernadette Chavez; he "prosecuted" the matter against Joan Coleman by terminating her employment; and he has "adjudicated" her case by serving at the first level of review.

I will put the matter even more simply: When is UCI going to end this charade and give Joan Coleman a fair hearing? So far the "review" process has been nothing but a mockery of fair procedure, beginning with the totally improper involvement of Dr. Horace Mitchell and continuing on with the purported review by Executive Vice Chancellor Tien, and the further anticipated participation of the very Chancellor whose promises and representations are a critical factor in the two grievances. I realize it may be easier for UCI to turn a deaf ear to Joan Coleman's requests and slavishly follow MAP Policy 70 even when such a procedure is unreasonable and unfair, but if it does so it acts at its own peril.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:kaw

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

August 29, 1989

Edward M. Opton, Jr.
University Counsel
Office of the General Counsel
University of California
590 University Hall
Berkeley, CA 94720

Re: Incompleteness of Administrative Review File for Joan Coleman

Dear Mr. Opton:

This is a follow-up to my letter of August 17, 1989 regarding the incompleteness of the file bearing upon Joan Coleman's administrative review. In fact, the file forwarded to the office of Assistant Vice President Levin contained many, many omissions. I have

asked Joan Coleman to identify those items missing from the Administrative Review File which she supplied to the factfinder and which, in theory at least, were (or surely ought to have been) reviewed by Executive Vice Chancellor Tien. I am enclosing copies of those documents along with this list to assist in your identification of them.

Among the documents missing from the Administrative File are the following:

1. Curriculum Vitae of Coleman.

2. Memorandum to Vice Chancellor Lillyman from Coleman dated September 21, 1984.

3. Memorandum to Meredith Lee from Tom Wilson dated July 16, 1984.

4. Confidential Memorandum to Meredith Lee from Guy Sircello dated August 15, 1984.

5. Draft by Coleman dated September, 1984.

6. Memorandum to Lillyman from Sylvia Lenhoff dated October 15, 1984.

7. Memorandum to Lillyman from Coleman dated September 21, 1984.

8. Letter of Appreciation from Lillyman to Sylvia Lenhoff regarding Coleman, dated October 29, 1984.

9. Handwritten note of January 21, 1985 to Coleman from Mitchell, with attached Proposal for Expanding the UCI Orientations Program.

10. Memo regarding Coleman dated February 14, 1984, with Coleman's attached Placement Test Data For Students Entering Fall, 1983.

11. Letters to Dean Meredith Lee from Jon Lawrence, George E. Miller, Marjorie C. Caserio, Grover Stephens,

Michael Fried, Rita W. Peterson, Dean R. J. Doedens and (again) Michael Fried.

12. Memo from Coleman to Mitchell dated February 14, 1985.

13. Draft by Joan Coleman dated April 10, 1985, entitled Application to MMS Program with attachments from Summer Institute for Women in Higher Education Administration.

14. Memorandum from Coleman to Professor Seymour Menton dated April 29, 1985.

15. Handwritten note from Mitchell to Coleman dated 5/30/85.

16. Memorandum from Mitchell to Coleman dated June 11, 1985.

17. Letter from Peltason to Coleman dated July 1, 1985.

18. Performance evaluation of Coleman for the period 10/1/84 to 6/30/85.

19. Note from Mitchell to Coleman dated July 9, 1985.

20. Note from Peltason to Coleman dated July 15, 1985 with attached article.

21. Letter from Dolly A. V. Christian to Peltason dated July 25, 1985 with letter from Coleman to Christian (dated January 24, 1985) with attachment.

22. Memo from Sylvia Lenhoff to Mitchell, dated October 23, 1985.

23. Note from Mitchell to Coleman dated January 7, 1986.

24. Memo from Peltason to Coleman dated January 6, 1986.

25. Note from Peltason to Coleman dated February 3, 1986.

26. Memo to Whom It May Concern from Hanford dated December 5, 1988.

27. Memo from Hanford to Coleman dated November 4, 1986.

28. Memo from Coleman to Mitchell dated December 19, 1986.

29. Program outline for May 11, 1987 with attached letter from Sheldon Knorr to John B. Slaughter dated April 13, 1987 referencing Joan Coleman.

30. Letter from Peltason to Coleman dated June 23, 1987.

31. Latter from Coleman to "Jack" dated June 8, 1987.

32. Letter from Coleman to Mitchell dated July 20, 1987.

33. Letter from Coleman to Mitchell dated July 28, 1987.

34. Letter from Samuel Myers to Coleman dated September 18, 1987.

35. Memo from Coleman to Mitchell dated October 13, 1987.

36. Memorandum from Outreach Counselors to Coleman dated October 20,

1987.

37. Letter from Coleman to Mitchell dated November 5, 1987.

38. Memo from Coleman to Mitchell dated December 3, 1987 regarding relocation to Administration Building.

39. Letter from Gary Lasky to Mitchell dated January 11, 1988.

40. Memorandum from Coleman to Abdouch dated February 10, 1988.

41. Letter from Coleman to Mitchell dated February 17, 1988.

42. Letter from Coleman to Mitchell dated February 24, 1988.

43. Note from Abdouch to Coleman dated April 4, 1988.

44. Letter from Coleman to Mitchell dated April 18, 1988.

45. Letter from Coleman to Mitchell dated April 25, 1988.

46. Letter from Coleman to Mitchell dated April 21, 1988.

47. Letter from Peltason to Coleman dated May 11, 1988.

48. Letter from Spencer Olin to Joan Coleman dated May 9, 1988 and referencing the 1988 Faculty Retreat.

49. Letter from Caserio to Coleman dated May 10, 1988.

50. Note from Michael Scott to Coleman dated May 25, 1988.

51. Letter from Michael Scott to Black Faculty and Staff Association dated May 13, 1988 with attachment.

52. Letter from Associate Dean Stuart Krassner to Coleman dated June 6, 1988.

53. Letter from Coleman to Mitchell dated June 6, 1988.

54. Handwritten note from Coleman

to Mitchell dated June 22, 1988.

55. Letter from Coleman to Mitchell dated June 27, 1988.

56. Letter from Mitchell to Coleman dated July 7, 1988 with attachment.

57. Note from Coleman to Mitchell dated July 13, 1988.

58. Memo from Chavez to Coleman dated August 8, 1988.

59. Memo from Lenhoff to Mitchell dated August 19, 1988.

60. Memo from Chavez to Lenhoff dated September 1, 1988.

61. Memo from Peltason to Campus Officers and Administrators dated October 6, 1988.

62. Letter from Joycelyn Allen to Coleman dated October 27, 1988.

63. Letter from Coleman to Dr. Chang Lin Tien dated January 13, 1989 with

attachments.

64. Fact Sheet dated May, 1988.

65. Announcement regarding Chavez dated June 12, 1984 with attachment.

67. Letter from Peltason to Coleman dated June 23, 1987.

Also missing from the Administrative Review File is a one page note from moan Coleman to Executive Vice-Chancellor Tien, providing him with additional information he requested when Ms. Coleman met with him on January 13, 1989. Ms. Coleman cannot locate a copy of this note.

Another Item which she cannot locate is a copy of Bernadette Chavez's application/resume which Ms. Coleman provided to the Fact-Finder, Ms. Sperling.

Ms. Coleman also informs me that when she picked up her copy of the Fact-

Finder's Report from Barbara Davia, she asked Davia why the considerable documentation she had submitted to Ms. Sperling was not attached to the Report. According to Ms. Coleman Barbara Davia stated that copies of this material had not been included with Ms. Coleman's copy of the Report because she already had copies in her possession. Apparently Ms. Davia also assured Ms. Coleman that although the documents were not attached to Ms. Coleman's copy of the Report, they were being sent on to Dr. Tien for the next level of review. If in fact those documents were sent to Dr. Tien, as they clearly should have been, they are part of the Administrative Review File which should have been consulted by Dr. Tien and reviewed by him, then forwarded on to Assistant Vice President Levin's office

for the next level of review.

I am deeply concerned by the obviously extensive, major omissions from the Administrative Review File which was sent to Assistant Vice President Levin's office. I am now more concerned than ever that this file was incomplete when it was sent to Executive Vice Chancellor Tien. If I am correct and Executive Vice Chancellor Tien did not have the complete Administrative File before him for purposes of his review, then I object to the entire review process as being incomplete, emissive, and patently violative of Joan Coleman's procedural and substantive due process rights.

I am also very disturbed by what appears to be a concerted effort by the University to selectively remove from the administrative file those documents which

are supportive of Joan Coleman. Just by way of illustration: In reviewing the documents which have apparently been omitted from the Administrative Review file it is evident that the University has removed a substantial body of material which would support the charges upon which Ms. Coleman's Administrative Review is based. For example, Horace Mitchell states in his response to the September 28, 1988 Administrative Review that Joan Coleman did not notify him by the appropriate deadline that she planned to return from her leave of absence. In fact, the letter dated December 19, 1986 (which is enclosed with this letter) establishes that she did in fact notify him by mail regarding her intention. This is just one illustration of the kind of document which has apparently been excised

from the University's Administrative Review File. I object strongly to the Administrative Review process as it has gone forward thus far and I will not accede to any attempts by the University to insist that it has accorded Ms. Coleman anything resembling a fair process to date.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:wp

Enclosures

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

September 18, 1989

Edward M. Opton, Jr.
University Counsel
Office of the General Counsel
University of California
590 University Hall
Berkeley, CA 94720

Re: Incompleteness of File in Administrative Review #C-MP-889-02 (Pre-Termination Dispute)

Dear Mr. Opton:

In your letter of July 26, 1989, you asked me to let you know by August 15, 1989 if Joan Coleman's Administrative Review File was incomplete. I confirmed to you in a letter of August 14, 1989 that I believed the Administrative Review File

was incomplete, then on August 29, 1989 followed up with a letter in which I listed sixty-nine apparent omissions from the Administrative file.

In the meantime, the University has granted itself an extension until September 29, 1989 to complete the Review. In the letters I have received, the University seems to be taking the position that this extension of time is necessary ". . . to provide adequate time for Mr. Carroll to discuss his concerns about the Administrative Review File, . . . " (Letter of Barbara Davia dated August 29, 1989.) I am not to blame for the extension of time being granted. The University is to blame because it still (apparently) has not been able to determine what was, or was not, in the Administrative File reviewed by Executive

Vice-Chancellor Tien and now currently being reviewed by the Office of the President.

In any event, the extension of time to September 29, 1989 is excessive, unreasonable, and unacceptable. Joan Coleman is entitled to a fair review conducted in a timely manner. So far she has received neither. I have several times objected to what I believe are procedural and substantive abuses of the entire review process insofar as Joan Coleman is concerned. Since they have been extensively stated on other occasions I will not repeat them here. I will, however, add the further objection that she is not having her Administrative Review handled in a timely manner. As with the Review concerning her dismissal from employment, the University continues

to grant itself inappropriate extensions of time which have arisen not from anything I have required time to discuss with you but from the University's own ineptitude in being able to determine the documents which comprise the Administrative Review File of Joan Coleman.

You stated to me in a telephone conversation today that the Office of the President gave you a list of documents which it stated were present in its file yet when you went over the list, you discovered that the documents there listed did not total a complete list of the omissions I set forth in my letter to you of August 29, 1989. While I am not surprised at the inconsistency, I continue to be amazed that something as important as this Administrative Review is handled

in so slapdash a fashion by the University.

The extension of time to September 29, 1989 is one to which I am making the strongest objections on behalf of Joan Coleman, and if there is any further attempt by the University to grant itself yet additional extensions of time, I will voice even stronger objections.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:kaw

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

October 6, 1989

Edward M. Opton, Jr.
University Counsel
Office of the General Counsel
University of California
590 University Hall
Berkeley, CA 94720

Re: Joan Coleman - Administrative Reviews
#C-MP-889-04
#C-MP-889-02

Dear Mr. Opton:

I have reviewed your letter of September 25, 1989, written in response to my letters of September 18, 1989 expressing concern about the delays in resolving the Administrative Reviews of Joan Coleman.

As you know, we requested that we be copied with the entire Administrative File which was reviewed by Executive Vice-Chancellor Tien and forwarded to the Office of the President for the third level of Administrative Review. (I am now talking about the pre-termination Administrative Review.) I was concerned to know whether the University had in fact reviewed the file in its entirety and faithfully and accurately transmitted that file for the third level of review. What we discovered vas that numerous documents were missing from the file that had been sent on to the President -- at least, insofar as a duplicate of that file was supposedly sent to us. While your letter of September 25, 1989 is replete with speculations as to who or what was responsible for the missing documents,

your letter is silent on whether or not Executive Vice-Chancellor Tien reviewed the same incomplete file that was apparently forwarded to the President's Office. To put the matter bluntly: Was the inaptitude and slapdash handling of Joan Coleman's case as characteristic of the second level of review (by Executive Vice Chancellor Tien) as it appears to have been at the third level of review in the President's Office? Even more basic than that: Did the University, at the fact-finding level, deliberately withhold evidence presented by Joan Coleman to the fact-finder? When Joan Coleman asked Barbara Davia about certain documentation that was missing from the factfinder's Report, Davia assured Coleman that the documentation in question had been sent along with the fact-finder's Report to

Executive Vice Chancellor Tien but had not been included with the copy of the Report given to Joan Coleman, since the resulting package would have been too bulky and much of the documentation was already in Joan Coleman's possession. I now have serious doubts that a complete and accurate file was ever transmitted to Executive Vice-Chancellor Tien. In fact, Joan Coleman has told me that when she met on January 13, 1989 with Executive Vice Chancellor Tien, he indicated that he was unaware of certain factual information and asked Joan Coleman to provide him with that information in writing. She did so on the same date. Amazingly, that same information had been presented previously to the fact-finder.

On the issue of whether certain of the documents we have mentioned seem

relevant to the Complaint, in your estimation., that is really nothing I care to discuss. The fact remains that a good deal of considerably relevant documentation has not been fully, fairly or timely reviewed in accordance with MAP Policy. I think that constitutes a clear denial of due process insofar as Joan Coleman is concerned.

I realize the University is now trying to cover its tracks by granting itself a seemingly endless series of extensions of time to review Joan Coleman's file. The fact remains, however, that these Administrative Reviews have dragged on for an intolerable period of time and delays of this magnitude work a prejudice on Joan Coleman.

I take particular exception to the last three paragraphs of your letter. In

the first place, your letter is oblivious to the realities of Joan Coleman's situation vis-avis the University. She has been drummed out of the University by the same individual who has served at the first level of "review" with regard to that decision. She has been subjected to a fact-finder's Report which is a mockery of its very title. She has been reviewed at the second level by an Executive Vice Chancellor who had to ask her for information which was supposedly already in the file and had been made available to the fact-finder. She was reviewed at the second level, and is about to be reviewed at the third level, in accordance with a file which appears to have been purged of documents favorable to her, situation. Yet you would have me believe that the Office of the President might yet act in a

fair-minded manner and, were that to occur, the Chancellor might take that into consideration in "making credibility determinations." I find that entire scenario to be laughable. If the Chancellor reaches a decision which is unfavorable to Ms. Coleman on the dismissal complaint and the Office of the President subsequently rules in Joan Coleman's favor regarding the earlier complaint, which in large part concerns the very person who initiated (and reviewed) the dismissal of Joan Coleman, then that is an inconsistency which in itself indicts the University's procedures and which the University is going to have to live with and defend.

As for your statement regarding the purported clarity of Ms. Coleman's waiver, I will simply say that you art in no

position to make any judgments about Ms. Coleman's state of mind. Ms. Coleman is waiving nothing. She is insisting on a fair and timely review, which is nothing more than she is entitled to anyway, and I see no reason why she should have to "waive" anything to be treated fairly by the University.

Very truly Yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:kaw

Irvine: Personnel Office

October 10, 1989

Judy McConnell
Office of Employee Relations
Office of the President

RE: Request from Joan Coleman Attorney David Carroll, August 29, 1989, Documents Missing from File Administrative Review #C-MP-689-02

You recently informed me that you had located in your office the following items listed in Mr. Carroll's letter:

Numbers 1, 23, 24, 32, 33, 37, 38, 40, 41, 42, 44, 53, 55, 56 and 57.

Enclosed are the following items:

Numbers 2, 3 (including note to

Chancellor 9/14), 4, 5, 6, 8, 10, 11, 12, 13, 14, 17, 18, 19, 20, 22, 25, 26, 27, 28, 29, 30, 31, 34, 35, 39, 43, 47, 48, 49, 50, 51, 59, 60, 61, 62, and 69. Please note that while Mr. Carroll refers to attachments to Numbers 13 and 51, we have not yet located the attachments.

Please also note that Mr. Carroll's description of Item 5 is not explicit. We have enclosed what we believe he is referring to. While there was not a copy of Bernadette Chavez's application/resume in the file, which would be Number 69 on Mr. Carroll's list, we have enclosed a Management Fellowship Program application which was in the file and which includes Ms. Chavez's background.

We are still searching for the documents which are identified by the

following numbers:

7, 9, 15, 16, 21, 36, 45, 52,

54, 58, 63, 64, 65, 67, and 68.

Sincerely,

Barbara Davia, Manager
Labor/Employee Relations

Attachments

cc: Edward Opton
David Carroll
Joan Coleman

UNIVERSITY OF CALIFORNIA, IRVINE

[LETTERHEAD]

January 30, 1989

Joan Coleman

4261 Margarita Street

Irvine, CA 92714

RE: Request for Administrative Review

#C-MP-889-04, Filed January 6, 1989

Dear Ms. Coleman:

Vice Chancellor Horace Mitchell has completed his review of your complaint, and attached his decision.

If you decide to request further review, please submit your request in writing to this office by February 6, 1989.

If your written request for further review is not received by the above date, your Administrative Review file will be closed.

If you have any questions, please call me at 856-5364.

Sincerely,

/s/

Barbara Davia, Manager
Labor/Employee Relations

Attachment
cc: David Carroll w/Attachment
Horace Mitchell w/o Attachment

IRVINE: VICE CHANCELLOR-STUDENT AFFAIRS

January 27, 1989

ADDRESSEE ONLY

BARBARA DAVIA, MANAGER

LABOR/EMPLOYEE RELATIONS

Re: Request for Administrative Review - Joan Coleman, #C-MP-889-04

I have read Ms. Coleman's request for administrative review of her termination, filed January 6, 1989.

Ms. Chavez desired and attempted to establish a positive and cooperative working relationship with Ms. Coleman. However, because of Ms. Coleman's behavior and performance deficiencies, it was necessary to bring them to her attention. Due process was provided. Ms. Chavez told Ms. Coleman what she expected and that continuing deficiencies could not be

tolerated. It is apparent that Ms. Coleman did not consider these discussions as an opportunity to correct her behavior and improve her performance.

The request for administrative review essentially contains the same points she presented in her response to the Notice of Intent to Terminate. There were no violations of MAP or Affirmative Action policies and procedures. I find no basis to warrant a change in the decision to terminate her appointment.

/s/

Horace Mitchell,
Vice-Chancellor-Student Affairs

HM:he

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

February 2, 1989

Barbara Davia, Manager
Labor/Employee Relations
University of California, Irvine
Irvine, California 92714

Re: Request for Further Administrative Review
#C-MP-889-04
Filed January 6, 1989 by Joan Coleman

Dear Ms. Davia:

As you are aware, I represent Joan Coleman. We have received your letter of January 30, 1989 addressed to Joan Coleman, to which is attached what purports to be a "review" of the Coleman

complaint by Vice-Chancellor Horace Mitchell. It is an interesting application of the concept of due process that Vice-Chancellor Mitchell is asked to review his own conduct and deem it appropriate. I am not surprised he does so nor am I surprised that his response of January 27, 1989 consists of nothing more than a series of statements without any factual underpinning whatsoever. On behalf of Ms. Coleman, I once again object to Vice-Chancellor Mitchell being any part of the review process. I further object to his January 27, 1989 statement as being an adequate explanation of the basis of his decision.

On behalf of Joan Coleman I am hereby requesting a further administrative review of this matter. You have given a deadline of February 6, 1989 for such a request in

writing to be submitted to your office, so this request will certainly be timely.

Since Joan Coleman has not received anything resembling due process at the first level of review, I demand that she be given due process at the second level of review and (if necessary) at the third level of review. With regard to the second level of review, Executive Vice-Chancellor Tien is not the appropriate person to conduct such review. He has already reviewed Joan Coleman with respect to a previous administrative review and has yet to give any factual basis for the conclusions he reached. I think the review process would be further tainted were he to review Joan Coleman a second time. Therefore, we ask that the next level of administrative review be by someone other than Executive Vice-

Chancellor Tien.

Very truly yours,

/s/

DAVID S. CARROLL of
DRUMMY GARRETT KING & HARRISON

cc: Edward M. Opton, Jr., Esq.

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

May 1, 1989

DELIVERED VIA FEDERAL EXPRESS

Ms. Barbara Davia
Manager, Labor/Employee Relations
University of California, Irvine
Irvine, CA 92717

Re: Administrative Review
#C-MP-889-04;
Joan Coleman, Dismissal

Dear Ms. Davia:

I have received your letter of April 18, 1989. For some reason it imposes an April 28, 1989 deadline for Joan Coleman to add any additional information or reschedule a meeting with Dr. Tien. I know of no authority for imposing a ten-day deadline on Ms. Coleman. We were certainly not informed of any such

deadline when we met with you and Dr. Tien.

Moreover, Joan Coleman has not yet seen the report enclosed with your letter. She has been in San Francisco attending to her family on the occasion of her mother-in-law's death and did not return to Southern California until yesterday, April 30, 1989. It seems to me that in all fairness she ought to have at least some opportunity to respond to this purported report of Julie Richwine.

The purpose of this letter is to request that Ms. Coleman be given a fair opportunity to respond to the report of Julie Richwine. I ask that Ms. Coleman be given up to and including May 15, 1989 to provide further information to Dr. Tien and/or reschedule a meeting with him.

Please advise me at once of the

University's decision regarding this request.

Very truly yours,

/s/

DAVID S. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:kaw
DICTATED BUT NOT READ

UNIVERSITY OF CALIFORNIA, IRVINE

[LETTERHEAD]

June 7, 1989

ADDRESSEE ONLY

Joan Coleman

Via Barbara Davia

RE: MAP Administrative Review

#C-MP-889-04

Dismissal

Dear Ms. Coleman:

I have completed my review of the documentation provided to me in your Administrative Review file.

The issue before is: Was Vice Chancellor Mitchell's action to terminate your employment justified; and, if so, was it accomplished in accordance with University MAP policies?

You allege your dismissal constitutes wrongful termination and lacks due

process. You claim numerous irregularities in the procedure, documentation and performance assessment on which the termination was based. You state the decision was based on incorrect information, hearsay, deliberately-solicited negative cements, trumped-up charges, and non-issues. You believe the termination was in retaliation for information regarding your job status and for filing a previous Administrative Review.

Your superior states you were resistant to her supervision and describes your behavior as uncooperative, argumentative, intimidating, and demanding in your relationship with her, your colleagues, and support staff. She was required to spend an inordinate amount of time clarifying assignments and discussing

behavioral issues with you. Because of these continuing deficiencies, one of which was cited in a letter of warning dated November 23, 1988, you were terminated.

Findings

1. You reported to the Vice Chancellor prior to the change in reporting relationship on July 8, 1988. You received a satisfactory performance evaluation in June, 1988. The Vice Chancellor had discussions with you, during your tenure in Student Affairs, regarding concerns about your interpersonal relationship skills.

2. You were under the impression the Chancellor made a commitment to provide you a development opportunity similar to that of an ACE Fellowship. You sought clarification of this immediately upon

being informed of the change in reporting relationship. You were informed by the Chancellor that he did not make such a commitment to you.

3. You believed there were other units outside Student Affairs that were willing to utilize your skills. You felt the Vice Chancellor did not adequately pursue these other job possibilities in lieu of making the change in reporting relationship. He said he pursued other career opportunities for you, and they were not available.

4. You considered your new superior, a former peer, unqualified to supervise you because you did not feel she had the professional supervisory experience, and she lacked knowledge in your area of expertise.

5. You believed the change in reporting relationship was made for the primary

purpose of building a case to terminate you.

6. You describe your interpersonal relationship style as "assertive."

The Administrative Review file is replete with documentation of charges and counter-charges which reflect the state of the relationship between you and your superior. The notice of intent to terminate provides a summary of events and instances of behavior that supports the position that you were argumentative, uncooperative, challenging, and intimidating. There is evidence that you were informed your behavior was unacceptable and could not be tolerated. It is evident that a change in your behavior did not occur, and the situation became unacceptable to your superior. Considering the findings, I believe the

evidence presented to be a true reflection of your behavior as assessed by your superior.

The evidence shows that other Student Affairs personnel experienced similar behavioral patterns from you in their working relationship with you. They informally discussed their concerns and experience with the Vice Chancellor prior to the decision to transfer the reporting relationship.

I have also considered your work with faculty. While the record shows that you were able to establish some effective working relationships with faculty, these relationships do not outweigh the unsatisfactory nature of your relationship with your immediate superior.

The evidence does not support your allegations of bias and malicious intent

an the part of the Vice Chancellor and your superior to terminate you. First, I find no fault with the Vice Chancellor's organizational decision to place program assessment under the auspices of Resource Planning.

Second, there is evidence to support your superior's efforts to have a cooperative professional relationship with you. There is no evidence to support your allegation that you were terminated because of a previously filed Administrative Review. The evidence presented in support of the action taken is based solely upon your interpersonal behavior and performance problem.

There is no evidence to support your allegations of lack of due process and irregularities in the application of University MAP policy and procedures. MAP

Policy 85 states: "When, in management's judgment, the needs or resources of a department or the performance or conduct of a member do not justify the continuation of a member's appointment, the member may be terminated." The fact that you were issued a letter of warning regarding an act of insubordination does not constitute a violation of the policy. Policy does not preclude the issuance of a Letter of warning; it simply does not require it.

I find no evidence of a violation of University Affirmative Action policy.

The justifiable termination of an employee is not a violation of Affirmative action goals and objectives.

In response to your allegation of irregularities in the review process, I believe this review of your termination is

being conducted in the manner established by University policy.

Based upon the above, I find the termination of your Employment justified. I also find the termination action was taken in accordance with University MAP policy and procedures.

Sincerely,

/s/

Chang-Lin Tien
Executive Vice Chancellor

cc: David Carroll
Horace Mitchell

DRUMMY GARRETT KING & HARRISON

[LETTERHEAD]

September 18, 1989

Edward M. Opton, Jr.
University Counsel
Office of the General Counsel
University of California
590 University Hall
Berkeley, CA 94720

Re: Joan Coleman: Administrative Review #C-MP-889-04 (Dismissal)

Dear Mr. Opton:

This is a follow-up to our telephone conversation today in which we discussed the continuing extensions of time being offered to Chancellor Peltason to respond to Joan Coleman's Administrative Review regarding her dismissal from employment.

As you are aware, Joan Coleman filed a Request for Administrative Review under

MAP Policy 70 on January 6, 1989. It is now September 18, 1989, more than eight months later, and still the University has not completed the review process. I find this delay to be appalling, especially since the University continues to grant itself unilateral extensions of time regardless of the impact of these extensions upon Joan Coleman's rights.

I notice in reviewing my file that Chancellor Peltason was granted an extension of time to August 11, 1989, then a second extension to September 8, 1989, then yet another extension to October 13, 1989. Joan Coleman vigorously objects to this third extension of time in particular (and to those which have preceded it). As you are aware, there is another Administrative Review currently pending which bears upon Joan Coleman's pre-

termination treatment by UCI, but the disposition of that Administrative Review is a separate issue. While there is evidence that the University has conducted that review without complete files and therefore in patent violation of procedural and substantive due process, that is a separate problem with which the University will have to deal. There is no reason, however, for repeatedly holding up the final decision regarding Joan Coleman's Administrative Review of her dismissal. We insist that this matter be adjudicated without further delay.

Very truly yours,

/s/

DAVID B. CARROLL of
DRUMMY GARRETT KING & HARRISON

DBC:kaw

UNIVERSITY OF CALIFORNIA, IRVINE

[LETTERHEAD]

November 30, 1989

ADDRESSEE ONLY

Joan Coleman

Via Barbara Davia

RE: MAP Administrative Review

#C-MP-889-04

Termination of Appointment

Dear Ms. Coleman:

I have completed my review of your Administrative Review file including the material you have added, Special Assistant Williams' report to Assistant Vice President Levin, and Ms. Levin's decision dated November 15, 1989.

Based upon this review, I find no basis to overturn Executive Vice Chancellor Tien's decision. I concur with his findings and conclusions, that the

termination of your appointment was justified and that the termination was conducted in accordance with Universal policy and procedure for a member of the Management and Professional Program.

Cordially

/s/

J.W. Peltason
Chancellor

cc: David Carroll
Chang-Lin Tien
Horace Mitchell
Edward Opton

STATE OF CALIFORNIA-STATE AND

CONSUMER SERVICES AGENCY

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

28 CIVIC CENTER PLAZA

SANTA ANA, CA 92701

(714) 558-4159

DATE: 07/06/89

EEOC CHARGE #340891212

CASE NAME: COLEMAN/UNIVERSITY OF CA-IRVINE

NOTICE TO RESPONDENT AND COMPLAINANT

UNIVERSITY OF CA-IRVINE

PERSONNEL MANAGER

CAMPUS DR.

IRVINE, CA 92717

DEAR PERSONNEL MANAGER

ENCLOSED WITH RESPONDENT'S COPY OF THIS

NOTICE IS A COPY OF SUBJECT CHARGE THAT HAS BEEN REFERRED TO THIS AGENCY BY THE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC). THE COMPLAINT HAS NOW BEEN FILED WITH THE CALIFORNIA DEVELOPMENT OF FAIR EMPLOYMENT AND HOUSING (EFEH) IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 12960. THIS NOTICE CONSTITUTES SERVICE PURSUANT TO THE GOVERNMENT CODE SECTION 12962.

NO RESPONSE TO THE STATE IS REQUIRED BY THE RESPONDENT. THE EEOC WILL BE RESPONSIBLE FOR THE INVESTIGATION AND EVALUATION OF THE MERITS OF THIS COMPLAINT. THAT AGENCY SHOULD BE CONTACTED DIRECTLY FOR ANY DISCUSSION OF RESOLUTION OF THE CHARGE. THE OFEH IS CLOSING ITS CASE ON THE BASIS OF "PROCESSING WAIVED TO ANOTHER AGENCY." SINCE THE OFEH WILL NOT BE ISSUING AN

ACCUSATION, THIS NOTICE IS ALSO BEING SENT TO THE COMPLAINANT NOTED BELOW AS NOTIFICATION OF THE RIGHT TO FILE A PRIVATE CIVIL SUIT IN A CALIFORNIA JUSTICE, MUNICIPAL OR SUPERIOR COURT. ANY COURT ACTION MUST BE TAKEN WITHIN ONE YEAR OF THE DATE OF THIS NOTICE. (REFER TO CALIFORNIA GOVERNMENT CODE SECTION 12965(B).) YOU SHOULD BE AWARE THAT THE OFEH DOES NOT RETAIN CASE FILES BEYOND THREE YEARS AFTER A COMPLAINT IS FILED, UNLESS THE CASE IS STILL OPEN AT THE END OF THE THREE-YEAR PERIOD.

SINCERELY,

/s/

MYONIA GIBBS
DISTRICT ADMINISTRATOR

CC:
JOAN COLEMAN
4261 Margarita St.
Irvine, CA 92714

(2)

93-961

Supreme Court, U.S.
FILED
JAN 13 1994
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOAN E. COLEMAN,

Petitioner,

v.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, BERNADETTE CHAVEZ, HORACE MITCHELL, and DOES 1-50, Inclusive,

Respondents,

On Petition for Writ of Certiorari to the California Court of Appeal for the Fourth Appellate District

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

On Brief:

JAMES E. HOLST
CHRISTINE HELWICK
JEFFREY A. BLAIR

Office of the General Counsel
300 Lakeside Drive, 7th Floor
University of California
Oakland, CA 94612
(510) 987-9800

RICHARD A. PAUL, Esq.
GRAY CARY WARE & FREIDENRICH, APC
401 "B" Street, Suite 1700
San Diego, California 92101
(619) 699-2843
Counsel for Respondents THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Dr. HORACE MITCHELL and BERNADETTE CHAVEZ

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1

REASONS FOR DENIAL OF THE WRIT 4

APPENDIX (Reprinted)

Declaration of Barbara Davia APP-333

Exhibits in Support of Declaration APP-348

Exhibit M APP-351

Exhibit O APP-361

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS

Fourteenth Amendment, Section 1 5

CASES

Westlake Community Hosp. v. Superior Court,
17 Cal.3d 465 [131 Cal.Rptr. 90] (1976) 7

Edgren v. Regents of University of California,
158 Cal.App.3d 515 [205 Cal.Rptr. 6]
(Cal.Ct.App. 1985) 7

STATEMENT OF THE CASE

Petitioner, a 51 year-old African-American woman, worked for THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (the "REGENTS") at U.C. Irvine for four years when she filed three administrative grievances pursuant to the University's grievance policy, MAPP 70.[1]

In each grievance petitioner received the full benefit of the MAPP 70 review she requested, including interviews with witnesses, document reviews, fact finding reports, higher level review, and the opportunity to take her termination grievance to an evidentiary hearing.

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[1] The record attached by petitioner to the petition fails to comply with Supreme Court Rule 14.1(k) in that petitioner fails to attach all opinions, orders, findings of fact and conclusions of law rendered in the case. Record support for a complete and correct statement of the case necessarily requires brief reference to a portion of the record not appended by petitioner. Relevant portions of the complete record are appended, and numbered App-333 et seq.

(App-333 et seq, esp. 348-350 (a list of the review record) and 351-362 (showing a hearing was available).)

Petitioner's various grievances claimed that Vice-Chancellor Dr. Mitchell, also an African-American, and Ms. Chavez, an Hispanic woman, discriminated against her based on race, sex and age. In her first pretermination grievance petitioner requested that a fact finder review her allegations. A fact finder was appointed and interviewed no fewer than 24 individuals including petitioner and her attorney, David Carroll, who represented her throughout the administrative hearings. The fact finder reviewed all pertinent documents and wrote a fact-finding report which was ultimately reviewed by U.C. Irvine Executive Vice Chancellor Tien (now the chancellor of UC Berkeley) who issued a decision denying the grievance in full. (App-341.) Petitioner and her attorney appealed the decision to the next level, which would have called for review by UC Irvine (and now entire UC system) chancellor Jack Peltason. At

petitioner's request the review was instead conducted by the then-University of California system-wide president David B. Gardner's office. (App-341.) As part of the review process for her third, post-termination case, petitioner was offered a full evidentiary hearing including the right to call, confront and cross-examine witnesses. (App-344-345.) Petitioner refused any and all hearing rights. (App-361-362.)

Rather than pursue her internal reviews and hearing rights, or file a writ of mandate in the state court system contesting any procedural or substantive decision on her grievances, petitioner withdrew from the review process, and filed suit in Orange County Superior Court.

The Superior Court dismissed part of her action on demurrer because her failure to exhaust administrative remedies left the court without jurisdiction under state law. The remainder of her claim, as to which the court had jurisdiction, was adjudicated in favor of respondent by summary judgment.

The California Court of Appeal unanimously affirmed in a short, unpublished decision, and the California Supreme Court denied review.

REASONS FOR DENIAL OF THE WRIT

This case presents none of the circumstances listed in this Court's Rule 10 which the Rule suggests guides the exercise of this Court's discretion in granting review.

First, the decision below is an unreviewed and unpublished decision of an intermediate state appellate court, and thus is not a decision requiring review and correction to avoid proliferation of an erroneous rule of law.

Second, the decision below contains absolutely no reference to federal law or a federal question; therefore, no federal question has been decided requiring review.[2]

Third, since no federal question has been decided below, the issue of whether the decision conflicts with the decision of the same federal question by another state supreme court or the U.S. Court of Appeals is moot.

Fourth, since no federal question has been decided below, there is no need to settle any controversy with respect to the manner of its decision.

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[2] Under Sup. Ct. Rule 14(h) petitioner should have specified precisely where and how the federal question has been raised and preserved. While petitioner variously makes reference to small "d" small "p" "due process," respondent sees no reference to Section 1 of the Fourteenth Amendment in any opinion, complaint or brief by petitioner at any stage of the proceeding. The first actual mention of the Fourteenth Amendment, as such, in this record appears in the Petition for Writ of Certiorari.

The issue decided by the California Court of Appeal was simply that under California law petitioner had a remedy to challenge perceived denials of her rights in the University's grievance adjudication system, namely, to proceed via writ. Since petitioner both partially invoked but then abandoned the internal review process and then failed to seek a writ, petitioner had not successfully exhausted her administrative remedies under state law.

Even if this record is construed to contain a federal question, review is not warranted. At no time until the petition for certiorari has petitioner ever contended that the pre-termination notice and opportunity to respond accorded to her violated any rule, procedure or due process. The very first time pre-termination hearing procedures were challenged in this proceeding seems to be in the petition for writ of certiorari. One notes the absence of any discussion at all on this issue in the demurrer or opinion of the Court of Appeal.

With respect to post-termination hearing procedures, under California law any due process challenge petitioner may have wished to bring to these matters could, and should, have been raised via writ. (Westlake Community Hosp. v. Superior Court, 17 Cal.3d 465 [131 Cal.Rptr. 90] (1976); Edgren v. Regents of University of California, 158 Cal.App.3d 515 [205 Cal.Rptr. 6] (Cal.Ct.App. 1985).) Petitioner had an adequate mechanism to raise any constitutional or other challenge, and failed to do so.

Finally, petitioner's characterization of this record as a matter in which she was denied an administrative hearing (see Petition, p. 11) is simply wrong. As the record appended to this opposition reflects, the procedures under which her post-termination review was conducted were administered in a way where an opportunity for a full evidentiary hearing was expressly extended to her, which opportunity she refused. (App-361-362.)

Respondent respectfully prays that the petition be denied.

Dated: January 11, 1994

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APPENDIX TO
BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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Attorneys for Defendants
The Regents of the University of California,
Bernadette Chavez and Horace Mitchell

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

JOAN E. COLEMAN,) Case No. X629380
)

Plaintiff,	)	EXPEDITED TRIAL PROGRAM
	)	JUDGE DAVID C. VELASQUEZ
vs.	)	
	)	EXEMPT FROM FEES
THE REGENTS OF THE	)	(Cal. Govt. Cod, §6103)
UNIVERSITY OF	)	
CALIFORNIA, et al.,	)	DECLARATION OF BARBARA
	)	DAVIA IN SUPPORT OF
Defendants.	)	DEFENDANTS' MOTION FOR
	)	SUMMARY JUDGMENT

Date: December 11, 1991
Time: 1:30 p.m.
Dept: 27
Discovery
Cut-Off: July 12, 1991
Motion
Cut-Off: January 3, 1992
Trial Date: February 3, 1992

I, Barbara Davia, declare:

1. I am the Manager of the Labor Relations and Consulting Services Department on the University of California, Irvine campus ("UCI"). I have been employed by UCI in that capacity since

May 13, 1981. The facts stated herein are based on my own personal knowledge and I could and would competently testify to them if called to do so.

2. Joan Coleman was employed by UCI from July 18, 1983 to December 7, 1988. During the period from September 24, 1984 to December 7, 1988, Joan Coleman was a Principal Analyst (Research and Planning Analyst) in the Office of Student Affairs. Her appointment was within the University of California Management and Professional ("MAP") Program subject to MAP policies.

3. The MAP policies contain all of the terms and conditions governing any employee within the MAP program, including Ms. Coleman. Included within the MAP policies is policy number 70 providing a MAP employee the right and opportunity to grieve within the University's quasi-judicial administrative process any and all claims and/or complaints concerning the terms and conditions of MAP employment.

MAP 70 policy entitled "Administrative Review" authorizes a MAP employee to grieve allegations of discrimination as well as termination of appointment. A true and correct copy of the MAP 70 Administrative Review policy that pertained to the plaintiff's termination grievance is attached hereto as Exhibit A.

4. MAP policy 70 describes that initial complaints concerning actions and conditions which may adversely affect a member's employment shall be discussed with the member's immediate superior. (See MAP 70 Administrative Review Policy subdivision (A).) MAP 70 provides that if the concerns regarding conditions and actions cannot be resolved through discussions with the member's immediate superior, the member may submit a request for review to the University official at the next administrative level. That official is charged with providing a written response. The policy provides that if the complaint is not resolved at that

level, a new written request may be submitted to designated officials at higher administrative levels pursuant to campus procedure.

5. Under the current MAP 70, when a complaint raises charges of discrimination or involves termination of employment (as in this case), the employee is entitled to an evidentiary fact finding. In plaintiff's case, while the evidentiary fact finding language of MAP 70 was in the process of being incorporated into the policy, I specifically told plaintiff's attorney, Mr. David Carroll, that the new policy calling for an evidentiary fact finding would apply to the plaintiff's grievance.

6. Under the policy, the fact finder is selected from outside the department where the action challenged was taken. The fact finder is empowered to take whatever steps are reasonably necessary to investigate the facts, including providing participants an opportunity to present information and comment on information provided by others. The fact finder then renders a written report. Under current policy, the fact

finder is expressly empowered to conduct an evidentiary fact finding and the employee is entitled to be represented by counsel. (See Exhibit B hereto "Instructions to Fact Finder" issued March 1, 1989.)

7. My responsibility as Manager, Labor Relations and Consulting Services, is to receive all MAP 70 grievances (and others) and see that they are processed according to policy. It is not my job, nor was it in the case of Joan Coleman, to adjudicate the facts or make determinations as to the merits of the claims. I am, however, the person responsible for receiving all MAP 70 administrative review charges and am responsible for maintaining UCI official grievance files. I am therefore able to comment on the exact process utilized by Joan Coleman in each of there three grievances which I discuss herein.

8. Ms. Coleman filed her first request for administrative review (#C-MP-889-02) on September 29, 1988, alleging that she was denied employment opportunities and had been demoted and

emotionally harassed because of her age and third-party sexual discrimination. The charge pertained to a claim that the Vice Chancellor of Student Affairs, Horace Mitchell, had effectively demoted her by causing her to report to Dr. Mitchell's executive assistant, Bernadette Chavez. Ms. Coleman alleged that reporting to Ms. Chavez, an executive assistant to the Vice Chancellor, amounted to a "demotion" and alleged that the basis of the demotion was because of her age and sex discrimination. Attached hereto as Exhibit C is a true and correct copy of Ms. Coleman's request for administrative review #C-MP-889-02 dated September 29, 1988 without attachments that were transmitted with the administrative review.[1]

9. In accordance with MAP policies and procedures, Dr. Horace Mitchell filed a written response as he was the next level

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[1] Attachments have been excluded herein solely to avoid burdening the court with voluminous ancillary documents of no material value in this motion.

superior (see Exhibit D hereto, a true and correct copy of Dr. Mitchell's response dated October 26, 1988 without attachments that accompanied the response.) Ms. Coleman appealed to the next level. Ms. Coleman was at all times represented by David Carroll, the attorney representing her in this civil suit.

10. Catherine "Penny" Sperling, the Clinic Supervisor/Director of Ambulatory Care Nursing at the UCI Medical Center, was appointed as fact finder. In accordance with MAP policies and procedures, she was not from Ms. Coleman's department and not familiar with the parties. Attached hereto as Exhibit E is a true and correct copy of the fact finding report of Ms. Sperling dated December 20, 1988. As is evident by the report, Ms. Sperling interviewed no less than 24 individuals concerning the claims of age and sex discrimination, including the plaintiff and her attorney,and concluded no such discrimination had occurred.

11. Ms. Sperling's report was sent to Executive Vice Chancellor Chang-Lin Tien (now the Chancellor of the UC Berkeley campus) who issued a decision on January 20, 1989 denying the grievance in full. (A true and correct copy of then Vice Chancellor Tien's January 20, 1989 letter to Coleman is attached hereto as Exhibit F.) Mr. Carroll and Ms. Coleman then appealed the Executive Vice Chancellor's decision to the next level. Under MAP 70, the normal final reviewer would have been UCI Chancellor Peltason. However, plaintiff and her counsel requested the review be conducted by University of California Systemwide President David P. Gardner. UCI agreed to have the next step review conducted by the Office of the President and the charges of sex and age discrimination were then reviewed by Assistant Vice President--Employee Relations (Systemwide) Lubbe Levin for a final decision. Assistant Vice President Levin issued a final decision which was transmitted to Ms. Coleman concluding that Ms. Coleman was not

subjected to discrimination on the basis of age or sex, that Ms. Coleman was not subjected to third-party discrimination on the basis of sex, that Ms. Coleman was not subjected to personal or emotional harassment and that Ms. Coleman was not denied support by Dr. Mitchell concerning her professional development. A true and correct copy of Assistant Vice President Levin's final decision dated November 15, 1989 with the attached Administrative (Third-Level) Review prepared by Mattie Williams is attached hereto as Exhibit G.

12. On November 28, 1988, Joan Coleman filed her second request for administrative review (#C-MP-889-03) alleging that a written warning given to her on November 23, 1988 was discriminatory and given in retaliation for her having filed the previous request for administrative review. A true and correct copy of that administrative review (without attachments) is attached hereto as Exhibit H.

13. As with the other administrative reviews, Ms. Coleman was represented throughout by attorney David Carroll and all MAP policies and procedures were complied with. This administrative review was taken by Ms. Coleman through the first level, that is, through her immediate superior, Dr. Mitchell, who issued a response on December 7, 1988 (a true and correct copy of which is attached hereto as Exhibit I). Dr. Mitchell's decision was that the behavior on November 18, 1989 was insubordinate and that the written warning would stand.

14. On February 13, 1989, I personally wrote to Ms. Coleman regarding closing that administrative review as no request had been received from her or her attorney requesting a further review. A true and correct copy of my February 13, 1989 letter to Ms. Coleman closing the administrative review is attached hereto as Exhibit J.

15. On January 16, 1989, Joan Coleman filed a third request for administrative review (#C-MP-889-04, a true and correct copy

of which is attached hereto as Exhibit K without attachments) alleging that the termination of her employment constituted wrongful termination based upon, among other things, her race. As with the other administrative reviews, this one comported in all respects with the MAP 70 policy. Julie Richwine performed a staff investigation for Executive Vice Chancellor Tien and issued a report of her investigation on April 14, 1989. On April 18, 1989, I sent to Mr. Carroll Julie Richwine's report which she had given to then Executive Vice Chancellor Tien. A true and correct copy of my April 18, 1989 letter with the enclosed Richwine Report is attached hereto as Exhibit L.

16. At that time, the University was incorporating an evidentiary fact finding into the MAP 70 program and on May 4, 1989 I wrote to David Carroll granting him an extension to May 15, 1989 for Joan Coleman's next level response and clarifying that an evidentiary fact finding would be available if Joan Coleman wished to use it. A true and

correct copy of my May 4, 1989 letter is attached here to as Exhibit M. Mr. Carroll did not ask for an evidentiary fact finding at all which was available to both Ms. Coleman and Mr. Carroll had they requested it.

17. On May 16, 1989 I received Joan Coleman's response to the Richwine report (a true and correct copy of which is attached hereto as Exhibit N). On May 22, 1989 I wrote again to Mr. Carroll acknowledging receipt of Ms. Coleman's response and confirming that no request had been made for a meeting with then Executive Vice Chancellor Tien or for an evidentiary fact finding. A true and correct copy of my May 22, 1989 letter is attached hereto as Exhibit O.

18. On June 7, 1989, Executive Vice Chancellor Tien issued his decision upholding Ms. Coleman's termination and finding no race discrimination or other discrimination; his decision was transmitted to Joan Coleman on June 7, 1989 (a true and correct copy of the transmittal is attached hereto as Exhibit P).

19. For approximately five months thereafter, Mr. Carroll discussed with various individuals within the University, including myself and University Counsel Edward M. Opton, the processing of #C-MP-0889-02 by the Office of the President. This third grievance was held in abeyance pending resolution of Ms. Coleman's previous grievance (#C-MP-889-02). After Assistant Vice President Levin's decision regarding the #C-MP-889-02 grievance was issued on November 15, 1989, I forwarded that decision to UCI Chancellor Jack Peltason on November 20, 1989 (a true and correct copy of my November 20, 1989 letter is attached hereto as Exhibit Q) for his consideration. On November 30, 1989, Chancellor Peltason issued his decision concerning C-MP-889-04 finding that the termination of Ms. Coleman was justified and conducted in accordance with MAP policies. (A true and correct copy of Chancellor Peltason's decision is attached hereto as Exhibit R.)

20. On December 1, 1989, I forwarded Chancellor Peltason's decision to Ms. Coleman, concluding all administrative reviews (a true and correct copy of my December 1, 1989 letter is attached hereto as Exhibit S).

21. Joan Coleman has never initiated any administrative writ of mandate or any other appeal mechanism to challenge any of the administrative reviews which are now final and binding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 7th day of November, 1991 at Irvine, California.

/s/ Barbara Davia
Barbara Davia

TABLE OF CONTENTS

EXHIBITS TO DECLARATION OF BARBARA DAVIA IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Exhibit

A MAP 70 Administrative Review Policy

B "Instructions to Factfinders" Appointed Under MAP Policy 70

C Joan Coleman' Request for Administrative Review No. C-MP-889-02

D Response to Request for Administrative Review by Joan Coleman, authored by Horace Mitchell, Ph.D

E Factfinders Report on Administrative Review Action of Joan Coleman, dated December 20, 1988

F Letter from Chang-Lin Tien to plaintiff, dated January 20, 1989

G Letter from Lubbe Levin to Barbara Davia, dated November 15, 1989

H Joan E. Coleman's Request for Administrative Review, dated November 28, 1988

I Letter dated December 7, 1988 from Horace Mitchell to Joan Coleman

J Letter of February 13, 1989 from Barbara Davia to Joan Coleman

K Joan Coleman's Third Request for Administrative Review, dated January 6, 1989 (without attachments)

L Letter dated April 18, 1989 from Barbara Davia to David Carroll enclosing the Richwine report

M Letter dated May 4, 1989 from Barbara Davia to Attorney David Carroll

N Joan Coleman's Response to the Richwine report, dated May 15, 1989

O Letter dated May 22, 1989 from Barbara Davia to David Carroll

P Letter dated June 7, 1989 from Executive Vice Chancellor Chang-Lin Tien to Joan Coleman

Q Letter dated November 20, 1989 from Barbara Davia to Chancellor Jack W. Peltason

R Letter dated November 30, 1989 form Chancellor Peltason to Joan Coleman via Barbara Davia

S Letter of December 1, 1989 from Barbara Davia to Joan Coleman

[Only Exhibits M and O are attached]

[EXHIBIT M]

University of California, Irvine [Letterhead]

May 4, 1989

ADDRESSEE ONLY

Mr. David Carroll
Drummy Garrett King & Harrison
P.O. Box 5080
Costa Mesa, CA 92628

RE: Administrative Review #C-MP-889-04
Joan Coleman, Termination

Dear Mr. Carroll:

You have requested in your letter of May 1 an extension to May 15 for Ms. Coleman to provide further information to Dr. Tien and/or to schedule a meeting with him. Your request is granted.

As I have stated in several letters to you, University policies and procedures have been designed to provide fairness and an orderly process for review. There has never been nor is there now any intent to deprive Ms. Coleman of her right to be heard. Imposition of time limits is intended to ensure that the process moves along, and extensions of time have been and will continue to be granted when necessary to both you and your client and to University officials in the interest of having a thorough

record and thoughtful consideration of the issues. Should you or Ms. Coleman require an extension of time in the future, a simple request will suffice.

Ms. Coleman has not requested that a factfinding be conducted in this Administrative Review, but I wanted to call to her attention a recent change in the policy, effective April 1, which provides for evidentiary factfinding in termination and medical separation cases. A copy of the revised policy is enclosed. While Ms. Coleman filed her request for review before the effective date of the revised policy, since the review is still in progress, we could arrange for an evidentiary factfinding if she wishes to have one. Please advise by May 10 if Ms. Coleman wishes to do so.

Very truly yours,

/s/jt/ Barbara Davia
Barbara Davia, manager
Labor/Employee Relations

Attachment

cc: Joan Coleman w/Attachment
Horace Mitchell w/Attachment
Edward Opton w/Attachment

70 ADMINISTRATIVE REVIEW

A. COMPLAINTS

A Management and Professional Program member is expected to discuss, with the member's immediate superior, conditions and actions which may adversely affect the member's employment.

B. REQUESTS FOR REVIEW

If the concerns regarding conditions and actions cannot be resolved through discussion with the member's immediate superior, the member may submit a request for review to the University official at the next administrative level. A request for review shall be in writing, shall contain copies of all relevant documents, and be received within thirty calendar days of the date the member could be expected to know of the condition or action which gave rise to the request. A written response to a request for review shall be made by the official to whom it is submitted. If the complaint is not resolved at that level, a new written request for review may be submitted to designated officials at higher administrative levels pursuant to campus procedure.

C. COMPLAINTS REGARDING TERMINATION, DISCRIMINATION, OR MEDICAL SEPARATION

If the condition or action which adversely affects the member's employment involves termination of appointment (Policy 85, Termination of Appointment), an allegation of discrimination

(Policy 12, Nondiscrimination), or medical separation (Policy 78, Medical Separation), the member may at any step, after conclusion of the review by the member's immediate superior, request in writing that the Chancellor or the Chancellor's designee appoint a factfinder. Such a request shall be in writing, and shall contain a statement of the complaint and copies of all relevant documents. In addition, such a request shall cause the process described in Section B above to be suspended pending the factfinder's report.

The factfinder shall be selected from outside of the department where the action challenged was taken. The factfinder shall take whatever steps are reasonably necessary to investigate the facts, including providing participants an opportunity to present information and to comment on information provided by others, and render a written report. The "University of California Instructions to Factfinders Appointed under MAP Policy 70 to Review Termination and Medical Separation Complaints" shall be provided to each factfinder who is appointed to investigate issues of Termination of Appointment and Medical Separation. The instructions shall also be provided to the Management and Professional Program member who has requested factfinding on these issues.

If the complaint is not resolved with the decision of the official receiving the report, the member may submit the report and copies of all documents related to the complaint to designated officials at higher administrative levels described in Section B who have not previously responded. Decisions at higher levels must be based on findings of fact. If a decision is based on facts different from those

found by the factfinder, those findings must be based on materials in the record.

UNIVERSITY OF CALIFORNIA
INSTRUCTIONS TO FACTFINDERS APPOINTED UNDER MAP POLICY 70 TO REVIEW TERMINATION AND MEDICAL SEPARATION COMPLAINTS

A. INTRODUCTION

Policy 70, paragraph C, of the Management and Professional program Personnel Policies, provides that if members of the Program wish, they may request the appointment of a factfinder in cases of termination of appointment and medical separation. (MAP Program Policy 70 also provides the opportunity for a factfinder to be appointed to review discrimination complaints. These instructions do not apply to complaints of discrimination.)

> The factfinder shall take whatever steps are reasonably necessary to investigate the facts, shall provide the opportunity for participants to present information and to comment on information provided by others, and shall submit a written report to the appropriate level of review for decision, as set forth in campus procedure.

B. PROCEDURES

1. Requests for Review

If the MAP Program member's complaint is not resolved at the conclusion of the review by the member's immediate

superior, the member is entitled to request, in writing, one factfinding at a subsequent administrative level. Such a request shall cause the review process as described in MAP Policy 70.B to be suspended pending the factfinder's report.

2. Submissions to the Factfinder

The factfinder shall review the written statement of the MAP Program member's complaint and the written responses, if any. The member's written complaint shall provide the following information:

a. a statement of the issues under review (the subject(s) of the complaint);

b. the position of the MAP Program member with respect to the issues under review.

c. a narrative description of the facts of the case, including the attachment of relevant documents; and

d. a statement of how the facts support the MAP program member's position.

If there has been no written response to the MAP Program member in the preceding steps of the process, the factfinder shall forward the MAP Program member's

complaint to the appropriate University official for a response.

The MAP Program member shall be provided with a copy of the University official's response.

3. Evidentiary Factfinding

Should either party to the complaint request it, or should the factfinder deem it necessary, the factfinder shall conduct an evidentiary factfinding.

Each party to the complaint has the following rights:

a. to appear personally before the factfinder;

b. to present evidence; and

c. to be present when witnesses testify and to examine and cross-examine witnesses.

4. Determination of Facts

The factfinder shall determine the facts based on the written submissions of each party and the evidentiary review sessions, if any were conducted.

C. FACTFINDER'S REPORT

The factfinder's report shall contain the following information:

1. a clear statement of the issues under review;

2. the positions of the parties;

3. a brief summary of the information received; and

4. findings of fact.

The report shall not contain any recommendations or remedies. However, the report shall provide a sufficient record of the facts so that the reviewing authority can use it as a basis for a decision and for determining any appropriate remedies.

All documentation which was received by the factfinder in making the findings shall be attached to the report.

D. TIME LIMITS

Time limits shall be as outlined in MAP Policy 70.B and as supplemented by campus procedure.

E. RECORDS

The factfinder shall submit requests for necessary records to the Personnel Manager, who shall provide them in accordance with policies governing access to personnel records.

F. REPRESENTATION

The MAP Program member filing the request and the University may be represented by counsel or by another person throughout the factfinding process.

[EXHIBIT O]

University of California, Irvine [letterhead]

Personnel

May 22, 1989

ADDRESSEE ONLY

Mr. David Carroll
Drummy Garrett King & Harrison
P.O. Box 5080
Costa Mesa, CA 92628

RE: Administrative Review #C-MP-889-04
Joan Coleman, Termination

Dear Mr. Carroll:

Ms. Coleman's letter of May 15, responding to mine of April 18 transmitting Julie Richwine's report, has been received.

This will confirm that no request for a meeting with Dr. Tien was made, nor was there a request for an evidentiary factfinding.

Ms. Coleman's letter of May 15 will be forwarded to Dr. Tien for his response.

Very truly yours,

/s/ Barbara Davia
Barbara Davia, Manager
Labor/Employee Relations

Attachment

cc: Joan Coleman
Horace Mitchell
Edward Opton
Chang-Lin Tien